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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1893.**

No. ~~1052.~~ 576

GEORGE A. PEARCE, PLAINTIFF IN ERROR,

*vs.*

THE STATE OF TEXAS, P. B. DORLAN, J. V. AND J. M. CUNNINGHAM, AND C. C. JACKSON.

IN ERROR TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS.

**FILED OCTOBER 27, 1893.**

**(15,436.)**

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1 *Caption.*

THE STATE OF TEXAS, }
*County of Taylor.* }

Before the Hon. T. H. Conner, judge of the 42d judicial district of Texas, and as such judge (judge of the district court in and for said county) sitting in chambers during vacation at the court-house, in the town of Abilene, Taylor county, Texas, on the 8th day of May, A. D. 1893, the following cause came on for hearing, to wit:

*Ex Parte* GEORGE A. PEARCE. No. 1253.

*Application for Habeas Corpus.*

THE STATE OF TEXAS, }
*Taylor County.* }

To the Hon. T. H. Conner, judge of the 42 judicial district of Texas:

Your petitioner, George A. Pearce, respectfully represents that he is illegally restrained of his liberty by J. V. Cunningham, sheriff of Taylor county, Texas; C. C. Jackson, deputy sheriff of said county, and by one P. B. Dorlon, who claims to be an agent of some kind from or for the State of Alabama; that such restraint, your honor is informed, is by virtue of a certain writ, a copy of which is hereto attached and marked "A."

That while the said writ, a copy of which is above referred to, recites that this petitioner stands charged by proper indictment with the crime of embezzlement and grand larceny committed in the State of Alabama, that as a matter of fact there is no indictment pending against this petitioner in the State of Alabama charging this peti-oner with any offense in said State of Alabama, and there is no indictment pending in any of the courts of said State of
2 Alabama charging this applicant with any crime or offense in Alabama, nor is there any charge, complaint, or presentment pending in any of the courts of the State of Alabama charging or accusing this petitioner with the commission of any crime or offense in the said State of Alabama, nor was there any such indictment, charge, complaint, or presentment pending in the said State of Alabama charging or accusing this petitioner with the commission of an offense in the State of Alabama at the time said writ was issued, nor was there any such charge, complaint, indictment, or presentment pending in said State of Alabama at the time the governor of said State of Alabama made any demand on the governor of Texas or at any time prior thereto.

That while said writ recites the fact to be that the alleged demand made by the governor of Alabama upon the governor of or the State of Texas is accompanied by a copy of said indictment, yet this petitioner is informed and believes and so charges the fact to be that said demand was accompanied by a copy of no indictment, and that any claimed or pretended indictment is in fact and law no in-

dictment, for the reason same charges no offense in Alabama—charges no offense against the laws of Alabama—and in fact and law the same charges no offense and in fact and law is no such offense as the laws of the United States will permit or authorize the extradition of a person from one State to another State, and that said pretended indictment was no such charge, indictment, complaint, affidavit, or presentment as under the laws of the United States would excuse, justify, or authorize the governor of Alabama in making a requisition upon the governor of Texas; and this petitioner is informed and believes and so charges the fact to be that any such pretended indictment was and is in law void, and that the requisition, warrant, and other steps thereunder are and have
3 been void and of no force or effect.

This petitioner believes and so states the fact to be that if any pretended or claimed copy or copies of indictments were or was presented to the governor of Texas in said matter by the governor of Alabama, it was or they were copies of the pretended indictments set forth in Exhibit- B & C, hereto attached and marked as B & C; that said pretended indictments and neither of them do authorize the governor of Alabama to so demand or the governor of Texas to grant such requisition for the reasons following:

1. They & each of them show they are void and charge no offense.

2. They do not inform this petitioner of what alleged crime or offense he is called upon to answer.

3. They charge no offense against the laws of Alabama, the demanding State.

4. They do not allege when any offense was committed or alleged to have been committed.

5. They do not show or allege that this petitioner is charged with the commission of any crime or offense in the State of Alabama or against the laws of Alabama.

6. That they do not accuse this petitioner with the commission of an offense in Alabama — laws of Alabama.

7. From such indictment the law presumes that the alleged offense-, if any charged, were barred by the statute of limitation.

8. That said indictments do not show that petitioner is substantially charged with the commission of any offense in Alabama, and that he is being deprived of his liberty without due process of law; that — is not informed of the nature and cause of the accusation against him; that said pretended charges are not, under the statutes and laws of the United States, charges, complaints, affidavits,
4 presentments, and indictments such as will authorize these illegal proceedings; that this petitioner believes and so charges the fact to be that the governor of Texas was by fraud, artifice, and deceit led to believe that petitioner was charged with the commission of an offense in Alabama, and by reason of such fraud, artifice, and deceit was induced to recite in his said warrant that it appeared that petitioner was charged with the commission of the offense of embezzlement and grand larceny in Alabama, and this petitioner charges and believes that the only evidence before the

governor of Texas outside of the said pretended indictments was such as were fraudulent and deceitful.

That this petitioner has now for more than three years prior to the issuance of said alleged requisition by the governor of Alabama upon the governor of Texas been a resident of the State of Texas and a citizen of the United States; that within the said period of said three years this petitioner has resided continuously in said State of Texas and has at no time been absent therefrom, nor has this petitioner at any time within said 3 years been in the State of Alabama.

That the whereabouts of this petitioner in Texas, the time and *at and* place of his residence in Texas, has been for all of said period of said 3 years *been* known to any and all persons in the State of Alabama who were interested or desirous of knowing or learning of his whereabouts.

Wherefore he asks to be permitted to make proof barring and plead the 3 years' statute of limitation.

That petitioner is being detained without authority of law.

That while it is true on the 21st day of April, 1893, your
5 honor discharged petitioner upon hearing of a writ of *habeas corpus*, the detention then complained of, as is by record manifest, was without color of authority, and the hearing in said cause could not have been adjudicated in said former hearing.

Reserving any and all rights to present other and different reasons and causes to show why said proceedings are unlawful & waiving no undetermined rights, this petitioner respectfully asks your honor to grant your writ of *habeas corpus* to the end that your petitioner may be brought before you for a hearing upon said restraint and detention, and upon a hearing hereof that petitioner be discharged.

I, Geo. A. Pearce, do swear that I am the applicant in above petition and that the allegations in said petition are true according to my belief.

GEO. A. PEARCE.

Sworn to and subscribed before me this 28th day of April, A. D. 1893.

M. C. LAMBETH,
*Clerk County Court of Taylor County, Texas,*
[SEAL.] By W. S. O. JOHNSON, *D'p'ty.*

EXHIBIT "A."

The State of Texas to all and singular the sheriffs, constables, and other civil officers of said State:

Whereas it has been made known to me by the governor of the State of Alabama that Geo. A. Pearce stands charged by indictment before the proper authorities with the crime of embezzlement & grand larceny committed in said State, and that the said defendant has taken refuge in the State of Texas; and whereas the said
6 governor, in pursuance of the Constitution and laws of the United States, has demanded of me that I cause the said

fugitive to be arrested and delivered to P. B. Dorlon, who is, as is satisfactorily shown, duly authorized to receive him into custody and convey him back to said State; and whereas said demand is accompanied by a copy of said indictment, duly certified as authentic by the governor of said State:

Now, therefore, I, J. S. Hogg, governor of Texas, by virtue of the authority vested in me by the constitution and laws of this State and of the United States, do issue this my warrant commanding all sheriffs, constables, and other civil officers of this State to arrest and aid and assist in arresting said fugitive and to deliver him when arrested to the said agent in order that he may be taken back to said State to be dealt with for said crime.

In testimony whereof I have hereto signed my name and have caused the seal of State to be hereon impressed, at Austin, Texas, this 22nd day of April, A. D. 1893.

J. S. HOGG,
*Governor of Texas.*

[SEAL.]

By the governor:
GEO. W. SMITH,
*Secretary of State.*

"B."

THE STATE OF ALABAMA, }
*Mobile County.* }

City Court of Mobile, February Term, 1889.

The grand jury of said county charge that before the finding of this indictment Geerge A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a corporation duly incorporated under laws of the State of Alabama, did embezzle or
7 fraudulently convert to his own use or did fraudulently secrete with intent to convert to his own use money to about the amount of thirty thousand dollars which came into — possession by virtue of his employment.

And the said grand jury do further charge that before the finding of this indictment George A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a corporation duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use or did fraudulently secrete with intent to convert to his own use money to about the amount of thirty thousand dollars, the personal property of the said insurance company, and which came into his possession by virtue of his office.

And the said grand jury do further charge that before the finding of this indictment George A. Pearce feloniously took and carried away thirty thousand dollars in the money of the United States of America, the denomination of which is to this grand jury unknown, of the value of thirty thousand dollars, the personal property of the Planters' and Merchants' Insurance Company, a corpo-

ration duly incorporated under the laws of the State of Alabama, against the peace and dignity of the State of Alabama.

LESLIE B. SHELDON,
*Solicitor for the County of Mobile.*

THE STATE OF ALABAMA, }
*Mobile County.* }

City Court of Mobile.

OFFICE OF CLERK.

I, Jno. F. Powers, clerk of the city court of Mobile, do hereby certify that the within, together with the indorsements hereon, is a true and correct copy of the original indictment now on file and of record in my office.

Given under my hand and the seal of the city court of
8 Mobile this 24th day of April, 1893.

[SEAL.] JOHN F. POWERS,
*Clerk of the City Court of Mobile.*

(Endorsed:) The State *vs.* George A. Pearce. Embezzlement & grand larceny. No prosecutor. —— ——, foreman. Witnesses: A. P. Bush, Hill Fitzpatrick, John Gaillard, T. G. Bush, Major Barnett. A true bill. R. M. Sands, foreman of the grand jury. Filed in open court February 16th, 1889. John F. Powers, clerk.

"C."

THE STATE OF ALABAMA, }
*Mobile County.* }

City Court of Mobile, February Term, 1889.

The grand jury of said county charge that before the finding of this indictment George A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a corporation duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently secrete with intent to convert to his own use eighteen one-thousand-dollar Alabama State bonds, designated as class
9 "A," of the value of one thousand dollars each, the personal property of the said insurance company, a more particular description of which bonds is unknown to the grand jury; which said bonds came into the possession of the said George A. Pearce by virtue of his employment.

2. And the said grand jury do further charge that before the finding of this indictment George A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a corporation duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use or did fraudulently secrete, with intent to convert to his own use, eighteen one-thousand-dollar Alabama State bonds, designated as class "A," of the value of one thousand dollars each, the personal property of the said insurance company, a more particular description of which bonds is unknown

to this grand jury, which said bonds came into the possession of the said George A. Pearce by virtue of his office.

3. And the said grand jury do further charge that before the finding of this indictment George A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a corporation duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use or did fraudulently secrete, with intent to convert to his own use, eighteen Alabama State bonds, designated as class "C." of the value of one thousand dollars each, the personal property of the said insurance —, a more particular description of which bonds is unknown to this grand jury, which said bonds came into the possession of the said George A. Pearce by virtue of his office or employment.

4. The grand jury of said county do further charge that
10 before the finding of this indictment George A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a company duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use or did fraudulently secrete, with intent to convert to his own use, money to about the amount of twenty thousand dollars which came into his possession by virtue of his employment.

5. And the said grand jury do further charge that before the finding of this indictment George A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a corporation duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use or did fraudulently secrete, with intent to convert to his own use, money to about the amount of twenty thousand dollars which came into his possession by virtue of his office.

6. And the said grand jury do further charge that before the finding of this indictment George A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a company duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use or did fraudulently secrete, with intent to convert to his own use, eighteen Alabama State bonds, of the value of about one thousand dollars each, the numbers of which and a more particular description of which *is* to this grand jury unknown, the personal property of the said insurance company, and which came into the possession of the said George A. Pearce by virtue of his office, against the peace and dignity of the State of Alabama.

7. The grand jury of said county do further charge that before
the finding of this indictment George A. Pearce, an officer
11 or agent of the Planters' and Merchants' Insurance Company, a company duly incorpor- under the laws of the State of Alaboma, did embezzle or fraudulently convert to his own use or did fraudulently secrete, with intent to convert to his own use, eighteen Alabama State bonds, of about the value of one thousand dollars each, the numbers of which and a more particular description of which *is* to this grand jury unknown, the personal property of the

said insurance company, and which came into the possession of the said George A. Pearce by virtue of his employment.

8. And the said grand jury do further charge that before the finding of this indictment George A. Pearce feloniously took and carried away eighteen one-thousand-dollar Alabama State bonds of class A, of the value of one thousand dollars each, a more particular description of which said bonds is to this grand jury unknown, the said bonds being then and there the personal property of the Planters' and Merchants' Insurance Company, a corporation incorporated under the laws of the State of Alabama.

9. And the said grand jury do further charge that before the finding of this indictment George A. Pearce feloniously took and carried away eighteen State of Alabama bonds of the denomination of one thousand dollars each, the numbers of which said bonds are unknown to the said grand jury, the said bonds being of the value of one thousand dollars each and the personal property of the Planters' and Merchants' Insurance Company, a company duly incorporated under the laws of the State of Alabama, against the peace and dignity of the State of Alabama.

10. The grand jury of said county do further charge that before the finding of this indictment George A. Pearce, an
12 officer or agent of the Planters' and Merchants' Insurance Company, a company duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use or did fraudulently secrete, with intent to convert to his own use, eighteen bonds of the State of Alabama, designated as of class "A," in denominations of a thousand dollars each, the numbers of the said bonds being unknown to said grand jury, of the value of one thousand dollars, the personal property of the said insurance company, and which came into the possession of the said George A. Pearce by virtue of his employment.

11. And the said grand jury do further charge that before the finding of this indictment George A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a company duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use, or did fraudulently *convert to his own use or did fraudulently* secrete, with intent to convert to his own use, eighteen bonds of the State of Alabama, designated as of class "A," in denominations of a thousand dollars each, the numbers of the said bonds — unknown to said grand jury, of the value each of one thousand dollars, the personal property of the said insurance company, and which came into the possession of the said Pearce by virtue of his office or employment.

12. And the said grand jury do further charge that before the finding of this indictment George A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a company duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use or did fraudulently
13 secrete, with intent to convert to his own use, eighteen bonds of the State of Alabama, designated as of class "C," in denominations of a thousand dollars each, the numbers of the said

bonds being unknown to the said grand jury, of the value of one thousand dollars each, the personal property of the said insurance company, and which came into *his* the possession of the said Pearce by virtue of his office or employment, against the peace and dignity of the State of Alabama.

13. The grand jury of said county do further charge that before the finding of this indictment George A. Pearce feloniously took and carried away eighteen bonds of the State of Alabama called class "C" bonds, of the value of one thousand dollars each, the numbers of which and a more particular description of which *is* to this grand jury unknown, the personal property of the Planters' & Merchants' Insurance Company, a company duly incorporated under the laws of the State of Alabama.

14. And the said grand jury do further charge that before the finding of this indictment George A. Pearce feloniously took and carried away eighteen Alabama State bonds, the numbers of which and the description of which *is* to this grand jury unknown, of the value of one thousand dollars each, the personal property of the Planters' & Merchants' Insurance Company, a corporation duly incorporated under the laws of the State of Alabama.

15. And the said grand jury do further charge that before the finding of this indictment George A. Pearce feloniously took and carried away twenty thousand dollars, money of the United States of America, the denomination and description of which *is* to this grand jury unknown, of the value of twenty thousand dollars, the personal property of the Planters' & Merchants' Insurance
14 Company, a corporation duly incorporated under the laws of the State of Alabama, against the peace and dignity of the State of Alabama.

LESLIE B. SHELDON,
*Solicitor for the County of Mobile.*

[Endorsed:] The State *vs.* George A. Pearce. Embezzlement & grand larceny. No prosecutor. —— ——, foreman. Filed in open court February 16th, 1889. John F. Powers, clerk. Witness-: A. P. Bush, Hill Fitzpatrick, John Gaillard, T. G. Bush. A true bill. R. M. Sands, foreman of the grand jury.

THE STATE OF ALABAMA, }
*Mobile County.* }.

City Court of Mobile.

OFFICE OF CLERK.

I, John F. Powers, clerk of the city court of Mobile, do hereby certify that the foregoing eleven pages contain a true and correct copy of the original indictment now on file and of record in my office.

Given under my hand and the seal of the city court of Mobile this 24th day of April, 1893.

JOHN F. POWERS,
[SEAL.] *Clerk of the City Court of Mobile.*

This application is in all things granted and clerk of the district court of Taylor county, Texas, is hereby commanded to issue
15 writ of *habeas corpus*, as the law directs, to the parties herein complained of as detaining the applicant Pearce, commanding them and each of them to have the body of said Pearce before me at the court-house in Abilene, Taylor county, Texas, at 9 a. m. May 8th, 1893, that time and place being set by me as the time and place for hearing this application, at which time and place this matter and returns hereunder are returnable.

Witness my official signature this the 28th day of April, A. D. 1893.

T. H. CONNER,
*Judge Presiding.*

(Endorsed:) #1253. *Ex parte* George A. Pearce. Application for *habeas corpus*. Filed April 28th, 1893. M. C. Lambeth, clerk dist. c'rt, Taylor Co., Tex.

*Writ of Habeas Corpus.*

The State of Texas to J. V. Cunningham, sheriff of Taylor county, Texas, and to J. M. Cunningham, deputy sheriff of said county, and to C. C. Jackson, a deputy sheriff of said county, and to P. B. Dorlon, as an individual and as agent for the State of Alabama, Greeting:

You and each of you are commanded to produce before the Honorable T. H. Conner, judge of the 42nd judicial district of Texas, and as such judge (judge of the district court in and for Taylor county, Texas), on the 8th day of May, 1893, at 9 o'clock a. m., at the court-house, in the town of Abilene, in Taylor county, Texas, the person of George A. Pearce, whom it is alleged you illegal- restrain
16 of his liberty, when and where you will show why you hold the said George A. Pearce in custody or restrain him of his liberty. Done by me by order of said judge, duly made and presented on the 28th day of April, A. D. 1893.

Herein fail not, and due return make hereof.

Witness my signature on this the 29th day of April, A. D. 1893.

M. C. LAMBETH,
[SEAL.] *Clerk District C'rt, Taylor County, Texas,*
By S. H. GARRISON, *Deputy.*

I swear that on April 29th, 1893, I delivered a true copy of this writ to the within-named C. C. Jackson and P. B. Dorlon, each in person, and on the 1st day of May, 1893, I delivered a true copy of this writ to J. M. Cunningham, named herein, and on the 2nd day of May, 1893, I delivered a true copy of this writ to the within-named J. V. Cunningham.

S. P. HARDWICKE.

Subscribed and sworn to by S. P. Hardwicke before me this the 8th day of May, A. D. 1893.

M. C. LAMBETH,
*Clerk Dist. Court, Taylor Co., Texas.*

(Endorsed:) *Ex parte* George A. Pearce. Writ *habeas corpus.* Issued April 29th, 1893. M. C. Lambeth, clerk district court, Taylor county, Texas, by S. H. Garrison. Returned and filed May 8th, 1893. M. C. Lambeth, clerk district court, Taylor Co., Tex.

17 *Respondent's Answer or Return.*

To the Hon. T. H. Conner, judge of 42nd judicial district of Texas:

In response to your honor's writ of *habeas corpus* I respectfully state that it is true that I have in my custody and under my restraint said Geo. A. Pearce, according to statement in his petition.

I hold said Geo. A. Pearce and now detain him by virtue of the authority of the executive warrant of the governor of the State of Texas, issued 22nd April, 1893, hereto annexed and made a part of this return.

The said Geo. A. Pearce was arrested by J. V. Cunningham, sheriff of Taylor Co., Tex., by virtue of said warrant, on 25th of April, 1893, and turned over to me on said 25th April, 1893, and I now hold him by virtue of said warrant and as the agent of the State of Alabama to receive said Geo. A. Pearce, which said agency for said State of Alabama is shown by certificate of appointment of gov. of said State of Alabama, hereto annexed as a part of this return.

Said executive warrant under which said Pearce was arrested and by virtue of which I now hold him as the agent of the State of Alabama was duly and legally issued by governor of Texas on the 22nd April, 1893, as is shown by the certified copy of the requisition of the governor of Alabama and a certified copy of the accompanying indictment against said Geo. A. Pearce, hereto annexed, marked Exhibits "A" and "B," and made a part of this return.

I also now bring before your honor, in obedience to your honor's order, the person of the said Geo. A. Pearce.

PHELAN B. DORLON,
*Ag't of Alabama.*

18 Sworn to and subscribed to before me by Phelan B. Dorlon on this 8th May, 1893.

M. C. LAMBETH,
*Clerk District Court, Taylor Co., Tex.*

State of Texas to J. V. Cunningham, sheriff of Taylor county, Texas, and J. M. Cunningham, deputy sheriff of said county, and to P. B. Dorlon as an individual and as agent for the State of Alabama, Greeting:

You and each of you are commanded to produce before the Honorable T. H. Conner, judge of the 42nd judicial district of Texas and as such judge (judge of the district court in and for Taylor county, Texas), on the 8th day of May, 1893, at 9 o'clock a. m., at the court-house, in the town of Abilene, in Taylor county, Texas, the person of George A. Pearce, whom it is alleged you illegally restrain of his liberty, when and where you will show why you

hold the said George A. Pearce in your custody or restrain him of his liberty.

Done by me by order of said judge, duly made and presented on the 28th day of April, 1893.

Herein fail not, and due return make hereof.

Witness my signature on this the 29th day of April, A. D. 1893.

M. C. LAMBETH,
[SEAL.] *Clerk District C'rt, Taylor Co., Texas,*
By S. H. GARRISON, *Deputy.*

(Endorsed:) *Ex parte* George A. Pearce. Writ of *habeas*
19 *corpus.* Issued April 29th, 1893. M. C. Lambeth, clerk district court, Taylor county, Texas, by S. H. Garrison, deputy.

*Executive Warrant.*

The State of Texas to all and singular the sheriffs, constables, and other civil officers of said State:

Whereas i- has been made known to me by the governor of the State of Alabama that George A. Pearce stands charged by indictment before the proper authorities with the crime of embezzlement and grand larceny committed in said State, and that the said defendant has taken refuge in the State of Texas; and whereas the said governor, in pursuance of the Constitution and laws of the United States, has demanded of me that I cause the said fugitive to be arrested and delivered to P. B. Dorlon, who is, as is satisfactorily shown, duly authorized to receive him into custody and convey him back to said State; and whereas said demand is accompanied by a copy of said indictment duly certified as authentic by the governor of said State:

Now, therefore, I, J. S. Hogg, governor of Texas, by virtue of the authority vested in me by the constitution and laws of this State and of the United States, do issue this my warrant commanding all sheriffs, constables, and other civil officers of this State to arrest and aid and assist in arresting said fugitive, and to deliver him when arrested to the said agent, in order that he may be taken back to said State to be dealt with for said crime.

In testimony whereof I have hereto signed my name and have caused the seal of State to be hereon impressed, at Austin,
20 Texas, this 22nd day of April, A. D. 1893.

[SEAL.] J. S. HOGG,
*Governor of Texas.*

By the governor:
GEO. W. SMITH,
*Secretary of State.*

(Endorsed:) No. —. The State of Texas *vs.* —— ——, charged with —. Issued —— —, A. D. 189–.

Received this warrant 4, 25, 1893, and executed the same day, ——, 1893, by arresting the within-named fugitive and delivering him to Phelen B. Dorlon, agent named in said warrant.

J. V. CUNNINGHAM,
*Sheriff Taylor County, Texas.*

*Appointment of P. B. Dorlon as Agent.*

STATE OF ALABAMA, EXECUTIVE DEPARTMENT.

The governor of the State of Alabama, to all to whom these presents shall come, sends greeting:

Know ye that P. B. Dorlon is hereby authorized and empowered, as agent on the part of this State, to receive from the proper authorities of the State of Texas George A. Pearce, charged with the crime of embezzlement & grand larceny, and who is a fugitive from justice, and convey him to this State, to be dealt with according to law.

All persons are therefore requested to permit the said
21 agent, at his own proper cost, to remove the said George A. Pearce unmolested into this State, the said agent peaceable and lawfully behaving.

In witness whereof I have hereunto set my hand and caused the great seal of the State to be affixed at Montgomery this 19th day of April, in the year of our Lord one thousand eight hundred and ninety-3, and in the one hundred and 17th year of American Independence.

THOS. G. JONES,
*Governor of Alabama.*

[SEAL.]

By the governor:
J. D. BARRON,
*Secretary of State.*

EX. "B."

*Certified Copy of Indictment.*

THE STATE OF ALABAMA, }
*Mobile County.* }

City Court of Mobile, February Term, 1889.

The grand jury of said county charge that, before the finding of this indictment, George A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a corporation duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use, or did fraudulently secrete with intent to convert to his own use, money to about the amount of thirty thousand dollars, which came into his possession by virtue of his employment.

And the said grand jury do further charge that, before the finding of this indictment, George A. Pearce, an officer or agent of the Planters' and Merchants' Insurance Company, a corporation duly
incorporated under the laws of the State of Alabama, did
22 embezzle or fraudulently convert to his own use, or did fraudulently secrete with intent to convert to his own use, money to about the amount of thirty thousand dollars, the personal prop-

erty of the said insurance company, and which came into his possession by virtue of his office.

And the said grand jury do further charge that, before the finding of this indictment, George A. Pearce feloniously took and carried away thirty thousand dollars in the money of the United States of America, the denomination of which and the description of which is to this grand jury unknown, of the value of thirty thousand dollars, the personal property of the Planters' & Merchants' Insurance Company, a corporation duly incorporated under the laws of the State of Alabama, against the peace and dignity of the State of Alabama.

(Signed) LESLIE B. SHELDON,
*Solicitor for the County of Mobile.*

Filed in open court February 16th, 1889.
(Signed) JOHN F. POWERS, *Clerk.*

Copy.

[Endorsed:] The State *vs.* George A Pearce. Embezzlement & grand larceny. No prosecutor. —— ——, foreman. Witnesses: A. P. Bush, Hill Fitzpatrick, John Gaillard, T. G. Bush,
23 Major Barnett. A true bill. (Signed) R. M. Sands, foreman of the grand jury.

THE STATE OF ALABAMA, }
*Mobile County.* }

City Court of Mobile.

OFFICE OF CLERK.

I, John F. Powers, clerk of the city court of Mobile, do hereby certify that the within is a true and correct copy of the original indictment now on file in my office.

Given under my hand and the seal of the said city court of Mobile this 17th day of April, 1893.

[SEAL.] (Signed) JNO. F. POWERS,
*Clerk of the City Court of Mobile.*

*Certificate of Geo. W. Smith, Secr'y State of Texas.*

THE STATE OF TEXAS, DEPARTMENT OF STATE.

I, Geo. W. Smith, secretary of state of the State of Texas, do hereby certify that the foregoing is a true and correct copy of the true bill or indictment accompanying the requisition papers of Thos. G. Jones, governor of the State of Alabama, in the case of George A. Pearce, on which requisition papers the governor of Texas issued his executive warrant for the arrest of the said George A. Pearce on April 22nd, A. D. 1893, together with all endorsements thereon, as the said certified copy of said true bill or indictment now appears on file in this department.

Witness my official signature and seal of State, affixed at the city of Austin, this 28th day of April, A. D. 1893.

[SEAL.] GEO. W. SMITH,
*Secretary of State.*

24 *The Requisition.*

STATE OF ALABAMA, EXECUTIVE DEPARTMENT.

The governor of the State of Alabama to his excellency the governor of the State of Texas:

Whereas it appears by the annexed copy of an indictment, which is duly authenticated in accordance with the laws of this State, that George A. Pearce stands charged with the crime of embezzlement & grand larceny, committed in the county of Mobile, in this State, and it has been represented to me that he has fled from the justice of this State and has taken refuge in the State of Texas:

Now, therefore, pursuant to the provisions of the Constitution and laws of the United States in such case made and provided I request that you cause the said George A. Pearce to be apprehended and delivered to P. B. Dorlon, who is hereby authorized to receive and convey him to the State of Alabama, there to be dealt with according to law.

In witness whereof I have hereunto set my hand and caused the great seal of the State to be affixed, at Montgomery, this 19th day of April, in the year of our Lord one thousand eight hundred and ninety-three, and in the one hundred and seventeenth year of American Independence.

[SEAL.] (Signed) THOS. G. JONES,
*Governor of Alabama.*

By the governor:
(Signed) J. D. BARRON,
*Secretary of State.*

25 THE STATE OF TEXAS,
DEPARTMENT OF STATE.

I, Geo. W. Smith, secretary of state of the State of Texas, do hereby certify that the foregoing is a true and correct copy of the requisition of Thos. G. Jones, governor of Alabama, on which J. S. Hogg, governor of Texas, issued executive warrant for the arrest of George A. Pearce April 22nd, A. D. 1893, as the original requisition now appears on file in this department.

Witness my official signature, and the seal of State, affixed at the city of Austin, this 28th day of April, A. D. 1893.

[SEAL.] GEO. W. SMITH,
*Secretary of State.*

Endorsed: No. 1253. *Ex parte* Geo. A. Pearce. Respondent's answer. Filed May 8th, 1893. M. C. Lambeth, clerk district court, Taylor county, Texas.

*Return of J. V. Cunningham et al.*

In Dist. Court, Taylor Co., Tex.

THE STATE OF TEXAS
*vs.*
GEORGE A. PEARCE. } 1253.

Now come J. V. Cunningham, J. M. Cunningham, and C. C. Jackson and say that on the 25 day of April, 1893, they did have in their custody and restrained of his liberty said George A. Pearce, but that on said day they turned him over to one P. B. Dor-
26 lon, who held and now holds him by virtue of the authority of the executive warrant of the governor of the State of Texas, issued on the 22nd day of April, 1893, and said George *George* A. Pearce was by us on said 25th day of April, 1893, arrested by virtue of the said warrant and by us turned over as aforesaid to said P. B. Dorlon, agent for the State of Alabama, as per telegram from gov. of Tex., hereto attached.

And for that reason we are not able to bring the body of said Geo. A. Pearce before this court, and we have not the warrant of said gov., but refer to the return of said P. B. Dorlon for same.

J. V. CUNNINGHAM, *Sheriff.*
J. M. CUNNINGHAM, *Deputy.*
C. C. JACKSON, *Deputy.*

Sworn to and subscribed before me this the 8th day of May, 1893, by J. V. Cunningham & C. C. Jackson.

[SEAL.] M. C. LAMBETH,
*Clerk Dist. Court, Taylor Co., Texas.*

*Telegram from Gov. of Tex.*

AUSTIN, T., 4, 29, '93.

To J. V. Cunningham, sh'ff, Abilene, Tex.:

Following is copy of telegram just received:

MONTGOMERY, ALA.

Gov. J. S. Hogg, Austin:

Thanks for telegram. Please order Pearce delivered at once. I will not recall requisition.

THOS. G. JONES, *Gov'er.*

You are therefore hereby directed to deliver said Pearce to Alabama agent in accordance with executive warrant.

27 J. S. HOGG,
*Governor of Texas.*

(Endorsed:) Return of J. V. Cunningham *et al.* The State *vs.* George A. Pearce. Filed May 8th, 1893. M. C. Lambeth, clerk district court, Taylor Co., Texas.

*Applicant's Exceptions to Return of Respondents.*

*Ex Parte* GEORGE A. PEARCE.

And now comes the applicant, George A. Pearce, and excepts to the sufficiency of the return made herein by respondents because the same is insufficient in law and shows that the detention of applicant under and by reason of said return is unauthorized by law. Wherefore applicant prays that he be discharged.

And applicant specially excepts to said return, and for grounds of such exception applicant says because—

1st. It does not appear from the indictment attached thereto or in any other legal manner that this applicant is charged with any offense against the law of the State of Alabama.

2nd. It does not appear from said indictment or in any other legal way that applicant is charged with the commission of any crime in the State of Alabama.

3rd. It does not appear in any legal way that the State of Alabama has jurisdiction of the alleged offense mentioned in said return.

28 4th. Said pretended indictment is no indictment in law for the reasons following:

*a.* It charges no place, for which reason it is not and cannot legally be made to appear that the courts of Alabama have jurisdiction of the alleged crime.

*b.* It charges no crime, for which reason in law it is no indictment, and for the further reason it does not appear therefrom that the alleged offense can now be prosecuted in said State of Alabama.

*c.* This applicant is not by said pretended indictment notified of the alleged accusation against him; for this, among other reasons, said alleged offense may have been committed 50, 40, 30, 20, 10 years ago, or at any other time within the history of mankind, and said alleged crime may have been committed in Texas, Georgia, or any other State or place, any yet all the allegations in said indictment contained be true; and said alleged indictment does not charge this applicant with any certain, definite, specific crime committed in or against the laws of Alabama.

5th. Said pretended indictment is not such a charge as will authorize the extradition of an alleged fugitive, it being in law no indictment.

5*a*. Said indictment does not specify the acts constituting the alleged crime.

5*b*. Said indictment and return do not disclose to this applicant for what alleged crime his extradition is sought.

5*c*. Said indictment and all proceedings thereunder are void under the extradition laws of the United States.

5*d*. Said indictment is no charge or indictment under the laws of the United States.

29 6th. Said return shows that no "copy of an indictment found," &c., certified as authentic by the governor of Alabama, was produced to the governor of Texas, as the laws requires.

7th. Said return discloses that there was nothing before the governor of Texas legally showing this applicant to be a fugitive from justice, and that in fact there was no evidence on showing to the governor of Texas to the effect that applicant was a fugitive from Alabama.

8th. Said return discloses that the governor of Alabama was not authorized to demand this applicant.

9th. Said return shows that the governor of Texas was not authorized to grant the demand alleged and to issue his warrant thereunder.

10th. Said return does not legally show that this applicant was in Alabama at the time of the commission of the alleged offense, and said return discloses no such showing was made to the governor of Texas.

11th. Said return does not legally show that this applicant has fled from Alabama, and discloses the fact that no such showing was made to the governor of Texas.

12th. Said return does not show that applicant — substantially charged with any crime committed in and against the laws of Alabama.

13th. Said requisition does not charge that applicant has committed any crime.

14th. Said requisition does not charge that applicant is a fugitive from justice.

15th. Said requisition does not show any offense committed by applicant in and against the laws of Alabama.

30 16th. It appears from said return that applicant is now deprived of his liberty without due process of law and that his restraint is illegal.

Premises considered, applicant prays that he be discharged from the custodyof respondents, and that he go hence with- date; as he will ever pray, &c.

LOCKETT & JOINER,
KIRBY, McKENZIE & KIRBY &
LEGETT & HARDWICKE,
*Attorneys for Applicant, George A. Pearce.*

Endorsed: *Ex parte* George A. Pearce. Exceptions by applicant Pearce to return of respondents. Filed May 8th, 1893. M. C. Lambeth, clerk district court, Taylor Co., Tex.

*Order Overruling Applicant's Exceptions.*

*Ex Parte* GEORGE A. PEARCE. No. 1253.

IN CHAMBERS, *May 8th*, 1893.

Now, on this day, came on to be heard the exceptions of applicant Pearce to the returns made by respondents herein, and in connection with said returns on the hearing of said exceptions it was admitted by all parties that the said applicant is and was a citizen of Texas and of the United States at the time the requisition in this

case was made; and it was further admitted that the said respondent Dorlan's return sets forth all the documentary evidence
31 presented by the governor of Alabama to the governor of Texas and all the documentary evidence upon which the governor of Texas acted in issuing his warrant herein, and the court, having heard said exceptions, is of opinion the law is against applicant, and said exceptions are in all things overruled, to which the applicant excepts.

*Judgment of the Court.*

*Ex Parte* GEORGE A. PEARCE. No. 1253.

IN VACATION, *May 8th*, 1893.

This day came on to be heard before me the application for the writ of *habeas corpus* against J. V. Cunningham, sheriff of Taylor county, Texas, and J. M. Cunningham, deputy sheriff of said county, and C. C. Jackson & P. B. Dorlon, a sh'ff or agent of the State of Alabama, and, the respondents having made due return of said writ of *habeas corpus* herein served upon them, and having produced before me the person of the said Geo. A. Pearce, I proceeded to hear the said application, and, after *have* heard and examined the writ and return of the respondent and all papers and documents thereto attached, and having heard the testimony offered on both sides, I am of the opinion that the said Geo. A. Pearce is legally held in custody & under restraint of his liberty by respondents.

It is therefore ordered and adjudged that the application of the said Geo. A. Pearce herein be denied, and that the said Geo. A. Pearce be, and he is now hereby, remanded to the custody of said respondent, P. B. Dorlon, agent and sheriff of the State of Alabama,
to the end that he may be transported to said State of Ala-
32 bama, and there proceeded against as provided by the laws of said State upon the charge by indictment of embezzlement & grand larceny, as appears from the copies of indictments attached to the petition herein and return of said Dorlon to writ herein.

To all of which applicant excepts & gives notice of appeal to our court of criminal appeals, provided, however, that pending the appeal herein the applicant be remanded to the custody of the sheriff of Taylor county, Texas, and by him safely kept to abide the judgment of said court of criminal appeals, and upon affirmance of the judgment of this court, if any, then to safely deliver said applicant into the custody of said P. B. Dorlon within this State, that the judgment of this court may be carried into effect.

It is further ordered that the clerk of the district court of Taylor county, Texas, do make & prepare a transcript of all the orders, proceedings, & evidence belonging to this cause for the appeal of this case and to submit the same to me.

*Statement of Facts.*

*Ex Parte* GEORGE A. PEARCE. No. 1253.

Hearing in chambers on *habeas corpus*, at the court-house, in Abilene, Taylor county, Texas, May 8th, 1893.

Be it remembered that on the trial of this cause the following were the facts and all the facts adduced and introduced in evidence, to wit:

1st. The respondent introduced the returns of respondents J. V. Cunningham, C. C. Jackson, and P. B. Dorlon, with the
33 exhibits attached thereto, which exhibits are in all things made part of this statement of facts.

2nd. It was admitted by all the parties hereto that at the time the requisition herein was issued that applicant Pearce was a citizen of Texas and of the United States, and that the exhibits attached to the return of respondent Dorlon herein sets forth the documentary evidence presented by the governor of Alabama to the governor of Texas in the matter of the requisition referred to in said return, and that said exhibits to said Dorlon's return shows all the documentary evidence in said matter upon which the governor of Texas acted in issuing his executive warrant which is attached to said Dorlon's return.

3rd. Mrs. Helen Pearce testified:

"Am wife of applicant. He has been living in Abilene, Taylor county, Texas, for more than four years continuously. I have corresponded ever since I have been here, & I have been here for more than 4 years, with the wives of officers of the insurance company mentioned in the indictment attached to said Dorlon's return.

That Pearce has lived by his proper name in Abilene and has made no effort to conceal his identity or whereabouts.

4th. P. B. Dorlon testified: "Have been sheriff of Mobile county, Alabama, since last September; knew Pearce there. He left there something over four years ago. I did not know where he went. Indictment was returned after he left. When I went into office did not know where Pearce was, and by corresponding with Texas sheriffs I located him about 2 or 3 weeks ago and had papers issued for him, came, and got him."

33½ We agree that the above and foregoing are all the facts adduced in evidence before Judge T. H. Conner, judge of the 42nd judicial district of Texas, sitting in chambers on the hearing of *habeas corpus* proceedings at Abilene, Taylor county, Texas, on the 8th day of May, 1893, said matter being to inquire into the restraint of applicant by reason of his detention under executive warrant issued by governor of Texas upon requisition made by governor of Alabama for extradition of said applicant on charge of embezzlement and grand larceny.

LOCKETT & JOINER,
KIRBY, McKENZIE & KIRBY &
LEGETT & HARDWICKE,
*For Applicant, George A. Pearce.*

F. S. BELL,
*Dist. Att'y & Att'y for Respondents.*

Approved and ordered to constitute and be a part of the record in said matter to which it refers, with this further statement in explanation, to wit: That while there was no formal proof of the laws of Alabama offered by the dist. att'y, yet, as a matter of fact, I had before me and considered what purported to be printed laws of the State of Alabama presenting the requisites of indictments, &c., in that State, and under which I held the indictments accompanying returns were good; at least not void.

T. H. CONNER,
*Judge 42nd Jud. Dist.*

34 (Endorsed:) 1253. *Ex parte* George A. Pearce. Statement of facts. Filed May 8th, 1893. M. C. Lambeth, clerk district court, Taylor Co., Tex.

*Clerk's Certificate.*

THE STATE OF TEXAS, }
*County of Taylor.* }

I, M. C. Lambeth, clerk of the district court of Taylor county, Texas, do hereby certify that the foregoing transcript contains a true copy of all the proceedings *is* (?) said above entitled and numbered cause.

Witness my signature and seal of office on this the 11th day of May, A. D. 1893.

M. C. LAMBETH,
[SEAL.] *Clerk of the District Court of Taylor County, Texas,*
By W. S. O. JOHNSON, *Deputy.*

The above and foregoing transcript is hereby in all things approved, & it is ordered that the same be immediately forwarded to our court of criminal appeals, now in session at Austin, Tex., this May 16, A. D. 1893.

T. H. CONNER,
*Judge 42nd Jud. Dist., Tex.*

35 *Opinion of the Court of Criminal Appeals.*

Filed June 23rd, 1893.

In Court of Criminal Appeals, Austin Term, 1893.

GEORGE A. PEARCE }
*vs.* } No. 226. 5th Assignment.
THE STATE. }

Appeal from Taylor county.

Relator was arrested on an executive warrant issued the 22nd day of April, 1893, by the governor of this State upon the requisition of the governor of Alabama, charging relator with embezzlement and theft. Upon the 28th day of April he presented his ap-

plication to the Hon. T. H. Conner, judge of the 42nd judicial district, for a writ of *habeas corpus*, praying, for reason therein stated, to be discharged from custody.

Upon hearing, the court refused the prayer of the relator, remanding him to the custody of the agent of Alabama who had him in custody at the institution of these proceedings.

Pending this appeal relator was placed in the custody of the sheriff of Taylor county.

Relator attached as Exhibit A to his petition a copy of the executive warrant, which recites that Geo. A. Pearce stands charged by indictment with the crime of embezzlement and grand larceny, committed in Alabama, and the defendant had taken refuge in the State of Texas, and that the governor of Alabama, in pursuance of the Constitution and laws of the United States, had demanded that he, the governor of Texas, cause said fugitive to be arrested and delivered to P. D. Dorlan, who was duly authorized to receive him, etc.

36 Petitioner further attached as Exhibits B and C copies of the indictments presented to the governor of Texas by the said executive of Alabama, duly certified to by the clerk.

In the return of the writ of *habeas corpus* by the said agent and by the sheriff of Taylor county the same exhibits are made, also the requisition of the governor of Alabama, stating that it appeared by the annexed copy of the indictment, duly authenticated in accordance with the laws of the State, that George A. Pearce stands charged with the crime of embezzlement and grand larceny committed in the county of Mobile, and it had been represented to him that he had fled from the justice of that State and taken refuge in the State of Texas.

Also as exhibits to the return the authorization of said Dorlan as agent.

There were two indictments so certified, each beginning as follows:

STATE OF ALABAMA, )
*Mobile County.* )

City Court of Mobile, February Term, 1889.

"The grand jury of said county charged that before the finding of this indictment George A. Pearce, an officer or agent of the Planters' & Merchants' Insurance Company," etc., and concluding, "against the peace and dignity of the State of Alabama."

The first indictment contains three counts, charging embezzlement and grand larceny of thirty thousand dollars, the property of said company. The second indictment contains fifteen counts, charging embezzlement and grand larceny of eighteen State bonds of the denomination of one thousand dollars each, the prop-

37 erty of said company, but, outside of the marginal statement of venue and the allegation of the crime being committed

before the finding of the indictment, there was no time nor venue laid in the indictment.

The relator insists on being discharged because there was no indictment pending against him in Alabama or elsewhere as would authorize his extradition: (1) That the so-called indictments were insufficient to authorize such a proceeding because it was not alleged therein that said offenses were committed in the State of Alabama and in violation of her laws; (2) that said indictments were wholly void in that no time or place were laid therein, and it did not appear where said offenses were committed nor that the said offenses were not long since barred. Relator further showed he had been a citizen of Texas for more than three years and his whereabouts were known to interested parties in Alabama, and he asked leave to make proof under the statute of limitations presumably of Texas.

It may be considered as the settled doctrine of the court that a *prima facie* case is made out against the relator where the returns of the writ of the *habeas corpus* or the exhibits filed with the petition show (1) a demand or requisition for the prisoner made by the executive of another State from which he is alleged to have fled; (2) a copy of the indictment found certified as authentic by the executive of the demanding State; (3) the warrant of the governor of th- *the* asylum State authorizing the arrest. When these facts are made to appear by papers regular on their face the prisoner is *prima facie* under legal restraint. Spear, Law of Extradition, 208–303; *In re* Clark, 9 Wend., 312; Schleen's Case, 4 Harr. (Del.), 377;
38 *In re* Hooper, 52 Wis., 699; People *vs.* Bradley, 56 N. Y., 182; Johnson *vs.* Riley, 13 Ga., 97; *Ex parte* Stanley, 25 Ct. App., 378.

This is practically conceded by relator, who does not deny he is a fugitive from justice or raise any issue thereon as he has a right to do. *Ex parte* Mohe, 2 Ala. Law J., 457; Wilcox *vs.* Nalze, 34 Ohio St., 520; Wharton's Crim. Pleading & Practice, 31, 34, & 35. Relator relies entirely upon the invalidity of the indictments for his discharge, for it is not shown how long the offenses were committed prior to the February term, 1889, when said indictments were found, nor what is the statute of limitation in Alabama, if any, for embezzlement and theft. Now, admitting that the indictments in this case, if tested by the laws and constitution of Texas, are wholly insufficient to be made the basis of a conviction, does it follow that they cannot sustain the requisition of the governor of Alabama for relator?

In considering the first objection of relator to the indictment, that it does not allege that the crimes therein mentioned were committed in Alabama and against her laws, we may say that the right and duty of the executive of this State to order the arrest and delivery of relator to the governor of Alabama is derived wholly from the Federal constitution and acts of Congress. As said in Hibler's case, 43 Texas, 203, this provision of the constitution is equally binding on each State as though it was a part of its own constitution or whether Congress had passed laws relating thereto or not.

Now, although the extradition law as understood by the authori-

ties can only be invoked by the State within whose limits the crime is committed, yet no*t* specific form of indictment is required by the Federal constitution or laws. On the contrary, the matter
39 seems to have been left to the due course of legal proceedings in each State.

Art. 4, sec. 2, part 2, of the Constitution of United States declares that a person charged in any State with treason, felony, or other crime — shall flee from justice and be found in another State, shall, on demand by the executive of the State from which he fled, be delivered up.

Revised Statutes of the United States, art. 5278, reads: "Whenever the executive authority of any State demands any person as a fugitive from justice of the executive of another State * * * to which such person has fled, and produces a copy of an indictment found * * * charging the person demanded with having committed treason, felony, or other crimes, certified as authentic by the governor of the State from which the person so charged has fled, it shall be the duty," etc.

An examination of the Constitution shows that where a person is charged that is in due course of legal procedure of the particular State, or, to use the language of the statute, where there is an indictment found charging a person with having committed a crime and he is a fugitive from justice, he should be surrendered on demand of the executive of the State from which he fled. Had the Constitution declared that where a person was charged with crime committed in the demanding State or had the act of Congress declared that the demanding governor must produce a copy of an indictment found charging the person demanded with having committed crime, it would perhaps be held necessary that the allegations should appear on the body of the indictment. But the fact that there are no such requirements and no special form of indictment prescribed (we are not speaking of affidavits or complaints) would seem to sanction the conclusion to which the great weight of authority tends,
40 that any indictment which, under the laws of the demanding State, sufficiently charges the crime will sustain the requisition even though wholly insufficient under the laws of the asylum State. It is, then, to the laws of the demanding State we should look to test the question of crime and, if deemed necessary, the sufficiency of the indictment.

Kentucky *vs.* Denison, 24 How., 154.
*Ex parte* Reggel, 114 U. S., 642, 651.
Davis' Case, 112 Mass., 324.
Brown's Case, 112 Mass., 401.
*In re* Greenaugh, 31 Vt., 279.
Briscoe's Case, 51 How. (N. Y. Prac.), 422.
4 Federal Rep., 432.
Spear on Extradition, 372 & 373.

Can we then take notice of the laws of the demanding State?

We can see no good reason why the governor of the asylum State, in the first instance (Spear on Extradition, 372), or the courts

upon hearing on *habeas corpus*, may not and should not look to those laws for guidance. In *Ex parte* Riggle, *supra*, a copy of certain of the penal laws of Penn. were forwarded with the requisition and were considered, and no reason exists why, when we have all the laws of several States at hand, they should not be examined. In trying the case below the court says he examined a copy of the laws of Alabama and found the indictments sufficient thereunder. We can see no error.

It is true that in criminal as well as civil cases the laws of other States must be proven before they can be taken notice of. Thus, in cases where stolen property is brought into this State, a con-
41 viction therefor cannot be sustained unless it is shown that the act committed in the State from whence it was brought would be theft or robbery by the laws of that State. P. C., 799. This is because the presumption of innocence must be indulged in favor of defendant by the tribunal which must pass upon his guilt or innocence, but in interstate extradition cases the court of the asylum State cannot pass upon such a question. The guilt or innocence of the relator cannot be considered.

The only question before the court is the correctness and legality of the proceeding. Do they conform to the requirements of Federal and such State laws as the asylum State may have adopted, not in conflict with the Federal laws?

2. In the case at bar there is no question as to the nature of the crimes charged, and that they are offensive against the laws of Alabama. Embezzlement and theft are crimes in every State of the Union. Neither time nor place are essential elements in said crimes. We do not think an indictment failing to charge time and venue must necessarily be fatally defective in every State of the Union, whatever be its statutes or forms of proceeding. In the case of Noles *vs.* The State, 24 Ala., 693, this question was passed on by the supreme court, which held that the then code dispensing with the necessity of allegation of time and venue, but requiring proof thereon, was not against the bill of rights; that the accusation of the commission of crime is the gravamen of the indictment that could not be dispensed with, but the particulars as to time, place, and circumstance, not constituting essential elements in the crime, may be dispensed with by statute and be left as a matter of course in establishing jurisdiction. See also Thompson's case, 25 Ala., 41;
42 Quarterman's case, 3 Heisk, 65; Alexander's case, 3 Heisk; Chamberlain's case, 6 N. W., 257; Foster's case, 19 Ohio St., 415.

In speaking of the allegation of time Mr. Bishop says it is a mere form unless some special reason renders it important. 1 Bish. Crim. Pract., 386. And in this State, where some allegation of time is necessary, any time between the finding of the indictment and the period fixed by limitation can be shown. In Alabama, under article 4373, Code 1886, it is not necessary to state the precise time at which the offense was committed. It may be alleged to have been committed on any day before the finding of the indictment unless time is a material ingredient of the offense. As to venue,

Mr. Bishop says: "It was provided by 14 and 15 Victoria, c. 100, art. 23, that the venue need not be stated in the body of any indictment, but the county or city named in the margin thereof shall be taken to be the venue for all the facts stated in the body of the indictment." Bish. Crim. Procedure, 368. He also says some of our States have adopted statutes more or less like this one. It is believed that none of them dispense with the proof of the place, but in some the provision is distinct that it need not be alleged. Thus, in Alabama "it is not necessary for the indictment to allege where the offense was committed, but the proof must show it to have been within the jurisdiction of the county in which the indictment is preferred." 1st Bish. Crim. Procedure, 385.

The article of the code referred to by Mr. Bishop is 4374 of the Code of 1886. It is true Mr. Bishop questions the wisdom of such legislation, 1 Bish. Crim. Procedure, 385, but we may answer
43 in the language of C. J. Taney, "Alabama has an undoubted right to regulate forms of pleading and process in her own courts in criminal as well as civil cases and it is not bound to conform to those of any other State. Kentucky *vs.* Denison, 24 How., 107; *Ex parte* Riggle, 114 U. S., 642.

The judgment appealed from is in all things affirmed, and it is ordered that appellant pay the costs of this appeal and that he be delivered to the said P. B. Dorlan or any duly authorized agent of the State of Alabama in accordance with the requirements of the executive warrant of the governor of this State.

SIMKINS, *J.*

We desire to modify certain propositions stated in the opinion of Judge Simkins.

It is intimated, if not stated directly, that the relator would have the right to show by proper evidence that the indictment in substance was not sufficient under the laws of the demanding State. Our position upon this question is that if it reasonably appears upon the trial of the *habeas corpus* that the relator is charged by indictment in the demanding State, whether the indictment be sufficient or not under the law of that State, the court trying the *habeas corpus* case will not discharge the relator because of substantial defects in the indictment under the laws of the demanding State. To require this would entail upon the court an investigation of the sufficiency of the indictment in the demanding State, when the true rule is that if it appears to the court that he is charged by indictment with an offense of all others prerequisites being complied with
44 the applicant should be extradited.

We are not discussing the character of such proof. This must be made by a certified copy of the indictment, etc.

J. M. HURT,
*Presiding Judge.*
W. L. DAVIDSON, *Judge.*

45 *Judgment of the Court of Criminal Appeals.*

FRIDAY, *June* 23, '93.

GEO. A. PEARCE *vs.* STATE OF TEXAS. } 226–5. Appeal from Taylor Co. Opinion by Simkins, J.

This cause came on to be heard on the transcript of the record of the court below, and the same being inspected, because it is the opinion of this court that there was no error in the judgment of the district court of Taylor county, it is ordered, adjudged, and decreed that said judgment be in all things affirmed. It is further ordered that Geo. A. Pearce pay all costs in this behalf expended, and that this decision be certified below for observance.

*Motion for a Rehearing.*

In Court of Criminal Appeals, Austin Term, 1893.

*Ex Parte* GEO. A. PEARCE.

Now comes relator and moves the court to vacate, annul, and set aside the judgment of affirmance rendered herein on the 23rd day of June, 1893, and grant a rehearing of his appeal for the following reasons, to wit:

First. The relator can be extradited under and by virtue of the Federal Constitution and acts of Congress only, under which extradition will only be granted when the party sought to be extradited stands charged by indictment or information with the commission of a crime within the territory of the demanding State, and

46 this court erred in holding that no form of an indictment is required by the Federal laws, for the term indictment as used in the Federal laws had a fixed and well-known meaning and has been so construed by this court.

Second. The court erred in its construction and interpretation of art. 4, sec. 2, of the Federal Constitution, and of art. 5278, Revised Statutes of the United States, in that this court construed said constitutional provision and said statute to authorize extradition when an indictment had been presented in the demanding State, when the true and proper construction thereof denies the right of extradition except where there is an indictment charging the commission of a crime committed within the territory of the demanding State.

Third. The court erred in holding that the indictment which is the basis for the extradition proceeding herein was such an indictment as satisfied the requirements of the Federal Constitution and statutes in proceedings of this character.

Fourth. The court erred in holding that the indictment in this record was a valid indictment under the laws of Alabama, because there is neither allegation or proof that this was a valid indictment under the laws of that State.

Fifth. The court erred in holding that time and venue were not essential elements in an indictment, and that same were matters of proof and not matters of pleading.

Sixth. The appellant herein is not a citizen of the State of Alabama and was not when the indictment herein was presented. These facts are shown by the statement of facts. He is not
47 subject to the laws of Alabama, and if the indictment herein is valid under the laws of that State against citizens of that State such fact should not prevail against a citizen of the United States who invokes the provisions of the Federal law, and the court therefore erred in affirming the judgment of the district judge and in remanding appellant to the custody of the agent for the State of Alabama. He therefore asks the court to set aside the judgment and grant him a rehearing.

LEGGETT & HARDWICKE,
*Att'ys for Appellant.*

SATURDAY, *June 24th*, 1893.

GEORGE A. PEARCE *vs.* STATE OF TEXAS. } Appeal from Taylor Co. Motion for Rehearing Overruled.

48 *Relator's Petition for Writ of Error.*

In Court of Criminal Appeals of Texas, Austin Term, 1893.

*Ex Parte* GEORGE A. PEARCE. No. 226. 5th Assignment.

To the Hon. J. M. Hurt, chief justice and presiding judge of the court of criminal appeals of Texas:

Your petitioner, George A. Pearce, — is a citizen of the United States and of Texas and a resident of Texas, complaining of the State of Texas, acting through its governor, Hon. Jas. S. Hogg, and its attorney general, Hon. C. A. Culberson, who reside and are now to be found in Travis county, Texas, and of P. B. Dorlan, of Mobile county, State of Alabama, and of J. V. Cunningham, J. M. Cunningham, and C. C. Jackson, all residents of Taylor county, Texas, respectfully alleges and shows as follows:

That on the 25th day of April, 1893, the relator herein was arrested by J. V. Cunningham, sheriff of Taylor, Texas, on an executive warrant issued by the governor of Texas, and on the same day was delivered by said Cunningham to the respondent, P. B. Dorlan, who claimed to be an agent of the State of Alabama; that on the 28th day of April, 1893, the relator herein presented his application to the Hon. T. H. Conner, judge of the 42nd judicial district of Texas, for the writ of *habeas corpus* to enquire into the legality of relator's detention. His application was granted by the said judge, and the time for return and hearing fixed for the 8th of May, 1893, at the court-house in Taylor county, Texas. The proper writs were issued and served on the proper parties.

In his application for *habeas corpus* relator stated in sub-
49 stance that his detention was by virtue of an executive warrant issued by the governor of Texas on the requisition of

the governor of Alabama, both of which were based upon a pretended indictment charging relator with embezzlement and theft, but that said pretended indictment was absolutely void and no indictment at all because, among other reasons, it did not inform relator of the nature of the accusation against him and did not charge any violation of the laws of Alabama nor any fact showing that the courts of Alabama had jurisdiction in the matter, and did not allege any time or place when and where the offense was committed, nor that any offense was committed by relator within the territorial limits of the State of Alabama, and that his detention was without due process of law, etc., and that said pretended indictment was not an indictment within the meaning of the Constitution of the United States and the Federal statute enacted thereunder relating to the extradition of a citizen from one State to another, and that the action of the governor of Alabama in the first instance and that of the governor of Texas in the next were without warrant or authority and in violation of relator's rights under the Federal Constitution and statutes, a copy of which indictment is attached to this petition, marked Exhibit A, and made a part hereof.

Copies of extradition or executive warrant and of the pretended indictment were attached to said application for *habeas corpus*.

At the time designated for the return and hearing the respondents appeared and made return. The respondent Dorlan's return showed
that he was the agent of the State of Alabama; that he held
50 relator by virtue of the executive warrant which had been issued on the requisition of the governor of Alabama, based on the indictment charging relator with theft and embezzlement, and he attached to his return the executive warrant, a copy of the requisition of the governor of Alabama, a copy of his appointment as agent for Alabama, and a copy of the indictment. The executive warrant and a copy of indictment attached to said return were the same as the copies attached to relator's application for *habeas corpus*. The respondents Cunningham, Cunningham, and Jackson made return in substance that they had arrested relator on the executive warrant which was attached to Dorlan's return and delivered him to Dorlan and referred to Dorlan's return, etc.

The relator, on the trial before Judge Conner, excepted generally and specially to the sufficiency of the returns made by respondents to show any lawful detention of relator and asked that he be discharged on said return. The reasons set up in said exceptions showing such insufficiency of the returns were substantially the same as those set up by relator in his application for *habeas corpus*, herein set out. The court overruled the general and special exceptions and relator excepted.

On the further trial of said case the respondents introduced in evidence the exhibits attached to the respondent Dorlon's return, and it was agreed and admitted that the exhibits attached to Dorlon's return *was* the only documentary evidence upon which the governor of Texas acted in issuing the executive warrant; and, further, that at the time the requisition herein was made the relator was a citizen of Texas and of the United States. It was also proved

on the trial of said cause that relator had resided in Texas
51 for more than four years, and that his whereabouts were known in Alabama, and that he lived under his own proper name in Texas, etc.; and, further, that the indictment herein was presented a short time after he left Alabama.

On this record and under this proof relator insisted on the trial before Judge Conner that his detention was illegal and unauthorized, for the reasons set out in the application for *habeas corpus* and in his exceptions to the sufficiency of the returns of respondents, and especially because the record and evidence does not show that relator stands charged, by indictment or otherwise, with having committed treason, felony, or other crime in the demanding State, as by the Federal Constitution and statutes is required to support extradition. Judge Conner remanded relator to the custody of Dorlan, and on notice of appeal to the court of criminal appeals he directed that the sheriff of Taylor county retain custody of relator pending the appeal. The relator perfected his appeal to the court of criminal appeals of Texas, and the transcript was filed in said court on the 6th day of June, 1893. The cause was submitted in said court for decision on the 10th day of June, 1893, and the same questions and rights were raised and urged in this court that were urged in the trial before Judge Conner, and on the 23rd day of June, 1893, said court of criminal appeals affirm*ing* in all things the judgment of Judge Conner and rendered its judgment in said cause, and in substance and effect said court of criminal appeals adjudged and decreed—

First. That the Federal Constitution and statutes required no specific form for an indictment, and therefore that the term
52 "indictment," as used in said Constitution and statutes, has no certain, specific, or defined meaning.

Second. That art. 4, sec. 2, part 2, of the Constitution of the United States, and art. 5278, Revised Statutes of the United States, do not require in extradition proceedings that the person sought to be extradited must as a basis for and a prerequisite to extradition be charged by indictment with the commission of "treason, felony, or other crime" within the jurisdiction of the demanding State, but that it is sufficient under said constitutional provision and said statute to warrant extradition if it appear only that the party stands charged by indictment in the demanding State, whether the indictment alleges that the offense was committed in said State or not.

Third. That the indictment in this case, which is the foundation for these proceedings, was such an indictment as is required by and conforms to the Federal Constitution and statutes relating to interstate extradition.

Fourth. That the indictment herein was invalid under the laws of Texas, but the court would not indulge the presumption in relator's favor that the laws of Alabama were the same as the laws of Texas, but would look to the Alabama laws to determine its sufficiency, even though there had been neither allegation nor proof of that fact in the court below.

Fifth. That the allegation of the time when a crime was com-

mitted and an allegation of where it was committed are not essential elements of an indictment in the State of Alabama, and an indictment which contained neither of these allegations in the State of Alabama was sufficient to support extradition under the
53 Federal laws, even though the party sought to be extradited was a citizen of the United States and another State at the time extradition is applied for.

Sixth. That the relator be remanded to the custody of P. B. Dorlan or other agents of the State Alabama to be carried back to that State on said charge, etc., all of which more fully appears from the certified copy; the opinion and finding of said court is hereto attached and marked Exhibit B and made a part of this petition.

Your petitioner further shows that on the 24th day of June, 1893, he filed in said court of criminal appeals his motion for rehearing in said cause, which said motion was duly submitted in said court on said 24th day of June, 1893, and which motion was on the same day of filing and submission by said court overruled and denied; that in said motion your petitioner insisted and urged that said court of criminal appeals had erred against the right and privileges of petitioner in all findings above set out. He specifically alleged in said motion, "The court erred in its construction and interpretation of art. 5278, Revised Statutes of the United States, in that this court construed said constitutional provision and said statute to authorize extradition when an indictment had been presented in the demanding State, when the true and proper construction thereof denies the right of extradition, except where there is an indictment charging the commission of a crime committed within the territory of the demanding State."

Your petitioner further avers and declares that under art. 4, sec. 2, of the Constitution of the United States, and art. 5278, Revised Statutes of the United States, relator cannot be extradited on
54 the purported indictment and proceedings had thereunder in this case, as the same is no indictment under said constitutional provision and statute, charging neither time nor venue nor in any manner disclosing that the State of Alabama has jurisdiction to enquire into any matter and thing complained of, nor that her laws have been violated, nor that any act was done or committed within her territory punishable under her laws, and that the demand by the governor of Alabama and action thereon by the governor of the State of Texas were null and void.

And, further, he is not informed by the purported indictment and record herein of the nature and cause of the accusation against him, as under the Constitution and laws of the United States he has a right to demand. Manifest error hath occurred to relator in the aforesaid judgment and decree of said court of criminal appeals, to the great damage and injury of your petitioner.

That in this cause there was drawn in question the construction of two clauses of the Constitution of the United States and a construction of a statute of the United States and the decision of the court of criminal appeals of Texas was against the right, title, privilege, and exemption specifically set up and claimed under the con-

stitutional provisions of the Federal Constitution and statutes, and that manifest error hath happened, to the great damage of your petitioner.

The said court of criminal appeals of the State of Texas is the highest court of law or equity in the State of Texas in *Texas in* which a decision can be had in the cause, and said judgment was final in said cause.

Wherefore your petitioner, Geo. A. Pearce, seeking to set aside said judgment, prays for the allowance of a writ of error to
55 the Supreme Court of the United States for the correction and revision of the many errors manifest in the record, and he prays for a citation in error to be served on the parties hereinbefore mentioned, and for such other and further process as may be necessary to suspend said judgment, and have same corrected in the Supreme Court of the United States.

K. K. LEGETT & S. P. HARDWICK,
*Att'ys for Petitioner, Geo. A. Pearce.*

Let the writ be issued as prayed for. This the 11th day of July, 1893.

J. M. HURT,
*Presiding Judge of the Court of Criminal Appeals of Texas.*

EXHIBIT "A."

THE STATE OF ALABAMA, }
*Mobile County.* }

City Court of Mobile, February Term, 1889.

The grand jury of said county charge that before the finding of this indictment Geo. A. Pearce, an officer or agent of the Planters' & Merchants' Insurance Company, a corporation duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use or did fraudulently secrete, with intent to convert to his own use, money to about the amount of thirty thousand dollars, which came into his possession by virtue of his employment.

And the said grand jury do further charge that before the finding of this indictment George A. Pearce, an officer or agent
56 of the Planters' and Merchants' Insurance Company, a corporation duly incorporated under the laws of the State of Alabama, did embezzle or fraudulently convert to his own use or did fraudulently secrete, with intent to convert to his own use, money of about the amount of thirty thousand dollars, the personal property of the said insurance company, and which came into his possession by virtue of his office.

And the said grand jury do further charge that before the finding of the said indictment Geo. A. Pearce feloniously took and carried away thirty thousand dollars of the money of the United States of America, the denomination of which and the description of

which *is* to this grand jury unknown, of the value of thirty thousand dollars, the personal property of the Planters' & Merchants' Insurance Company, a corporation duly incorporated under the laws of the State of Alabama, against the peace and dignity of the State of Alabama.

(Signed) LESLIE B. SHELDON,
*Solicitor for the County of Mobile.*

Filed in open court February 16th, 1889.
(Signed) JOHN F. POWERS, *Clerk.*

Copy.

[Endorsed:] The State *vs.* George A. Pearce. Embezzlement and grand larceny. No prosecutor. —— ——, foreman. Witness-:
A. P. Bush, Hill Fitzpatrick, John Goillard, T. L. Bust,
57 Major Burnett. A true bill. (Signed) R. M. Sonds, foreman of the grand jury.

EXHIBIT B.

In Court of Criminal Appeals, Austin, —— Term, 1893.

GEORGE A. PEARCE
*vs.*
THE STATE. } 226. 5th Ass't.

Appeal from Taylor county.

Relator was arrested on an executive warrant issued the 22nd day of April, 1893, by the governor of this State upon the requisition of the governor of Alabama charging relator with embezzlement and theft. Upon the 28th day of April he presented his application to the Hon. T. H. Conner, judge of the 42nd judicial district, for a writ of *habeas corpus*, praying, for reason therein stated, to be discharged from custody.

Upon hearing the court refused the prayer of the relator, remanding him to the custody of the agent of Alabama who had him in custody at the institution of these proceedings. Pending this appeal relator was placed in the custody of the sheriff of Taylor county.

Relator attached as Exhibit A to his petition a copy of the executive warrant, which recites that Geo. A. Pearce stands charged by indictment with the crime of embezzlement and grand lar-
58 ceny committed in Alabama, and the defendant had taken refuge in the State of Texas, and that the governor of Alabama, in pursuance of the Constitution and laws of the United States, had demanded that he, the governor of Texas, cause said fugitive to be arrested and delivered to P. D. Dorlan, who was duly authorized to receive him, etc.

Petitioner further attached as Exhibits B & C copies of the indictments presented to the governor of Texas by the said executive of Alabama, duly certified to by the clerk.

In the return of the writ of *habeas corpus* by the said agent and by the sheriff of Taylor county the same exhibits are made, also the requisition of the governor of Alabama, stating that it appeared by the annexed copy of the indictment duly authenticated in accordance with the laws of the State that George A. Pearce stands charged with the crime of embezzlement and grand larceny committed in the county of Mobile, and it has been represented to him that he had fled from the justice of that State and taken refuge in the State of Texas.

Also, as exhibits to the return, the authorization of said Dorlan as agent.

There were two indictments so certified, each beginning as follows:

STATE OF ALABAMA, }
*Mobile County.* }

City Court of Mobile, February Term, 1889.

"The grand jury of said county charge that, before the finding of this indictment, George A. Pearce, an officer or agent of the Planters' & Merchants' Insurance Company," etc., and concluding, "against the peace and dignity of the State of Alabama."

The first indictment contains three counts, charging embezzlement and grand larceny of thirty thousand dollars, the property of said company. The second indictment contains fifteen counts, charging embezzlement and grand larceny of eighteen State bonds of the denomination of one thousand dollars each, the property of said company; but, outside of the marginal statement of venue and the allegation of the crime being committed before the finding of the indictment, there was not time nor venue laid in the indictment.

59

The relator insists on being discharged because there was no indictment pending against him in Alabama or elsewhere as would authorize his extradition: (1) That the so-called indictments were insufficient to authorize such a proceeding because it was not alleged therein that said offenses were committed in the State of Alabama and in violation of her laws; (2) that said indictments were wholly void in that no time or place were laid therein, and it did not appear where said offenses were committed nor that the said offenses were not long since barred. Relator further showed he had been a citizen of Texas for more than three years and his whereabouts were known to interested parties in Alabama, and he asked leave to make proof under the statute of limitation, presumably of Texas.

It may be considered as the settled doctrine of the courts that a *prima facie* case is made out against the relator where the returns of the writ of the *habeas corpus* or the exhibits filed with the petition show (1) a demand or requisition for the prisoner made by the executive of another State from which he is alleged to have fled; (2) a copy of the indictment found certified as authentic by the execu-

tive of the demanding State; (3) the warrant of the governor of the asylum State authorizing the arrest. When these facts are made to appear by papers regular on their face the prisoner is *prima facie* under legal restraint. Spear, Law of Extradition, 208–
60 303; *In re* Clark, 9 Wend., 212; Schleen's case, 4 Harr. (Del.), 377; *In re* Hopper, 52 Wis., 699; People *vs.* Bradley, 56 N. Y., 182; Johnson *vs.* Riley, 13 Ga., 97; *Ex parte* Stanley, 25 C't App., 378.

This is practically conceded by relator, who does not deny he is a fugitive from justice or raise any issue*d* thereon, as he had a right to do. *Ex parte* Mohe, 2 Ala. Law J., 457; Wilcox *vs.* Nalze, 34 Ohio St., 520; Wharton Crim. Pleading & Practice, 31, 34, & 35. Relator relies entirely upon the invalidity of the indictment for his discharge, for it is not shown how long the offenses were committed prior to the February term, 1889, when said indictments were found, nor what is the statute of limitations in Alabama, if any, for embezzlement and theft. Now, admitting that the indictments in this case, if tested by the laws and constitution of Texas, are wholly insufficient to be made the basis of a conviction, does it follow that they cannot sustain the requisition of the governor of Alabama for relator?

In considering the first objection of relator to the indictment that it does not allege that the crime herein mentioned was committed in Alabama and against her laws we may say that the right and duty of the executive of this State to order the arrest and delivery of relator to the governor of Alabama is derived wholly from the Federal Constitution and acts of Congress; as said in Hibler's case, binding on each State, as though it was a part of its own constitution or whether Congress had passed laws relating thereto or not.

Now, although the extradition law, as understood by the authorities, can only be invoked by the State within whose limits the crime is committed, yet no*t* specific form of indictment is re-
61 quired by the Federal Constitution or laws. On the contrary, the matter seems to have been left to the due course of legal proceedings in each State.

Art. 4, sec. 2, part 2, of the Constitution of the United States declares that a person charged in any State with treason, felony, or other crime who shall flee from justice and be found in another State shall, on demand by the executive of the State from which he fled, be delivered up.

Revised Statutes of the United States, art. 5278, reads: "Whenever the executive authority of any State demands any person as a fugitive from justice of the executive — another State * * * to which such person has fled, and produces a copy of an indictment found * * * charging the person demanded with having committed treason, felony, or other crimes certified as authentic by the governor of the State from whence the person so charged had fled, it shall be the duty, etc."

An examination of the Constitution shows that where a person is charged that is in due course of legal procedure of the par-

ticular State, or, to use the language of the statute, where there is an indictment found charging a person with having committed a crime and he is a fugitive from justice, he should be surrendered on demand of the executive of the State from which he fled. Had the Constitution declared that where a person was charged with crime committed in the demanding State or had the act of Congress declared that the demanding governor must produce a copy of an indictment found charging the person demanded with having committed a crime within said State, it would perhaps be held necessary that such allegations should appear on the body of the indictment; but the fact that there are no such requirements and no special form of indictment prescribed (we are not speaking of affidavits or complaints) would seem to sanction the conclusion to which the great weight of authority tends that any indictments which under the laws of the demanding State sufficiently charges the crime will sustain the requisition even though wholly insufficient under the laws of the asylum State.

62

It is, then, to the laws of the demanding State we should look to test the question of crime, and, if deemed necessary, the sufficiency of the indictment.

Kentucky *vs.* Denison, 24 How., 154.
*Ex parte* Reggel, 114 U. S., 642, 651.
Davis' case, 112 Mass., 324.
Brown's case, 112 Mass., 409.
*In re* Greenaugh, 31 Vt., 279.
Briscoe's case, 51 How. (N. Y. Prac.), 422.
4 Federal Rep., 432.
Spear on Extradition, 372 & 373.

Can we, then, take notice of the laws of the demanding State?

We can see no good reason why the governor of the asylum State, in the first instance (Spear on Extradition, 372), or the courts upon hearing on *habeas corpus* may not and should not look to those laws for guidance. In *Ex parte* Riggle, *supra*, a copy of certain of the penal laws of Penn. were forwarded with the requisition and were considered, and no reason exists why, when we have all the laws of several States at hand, they should not be examined. In trying the case below the court says he examined a copy of the laws of Alabama and found the indictments sufficient thereunder. We can see no error.

It is true that in criminal as well as civil cases the laws of other States must be proven before they can be taken notice of. Thus, in cases where stolen property is brought into this State, a conviction therefor cannot be sustained unless it is shown that the act committed in the State from whence it was brought would be theft or robbery by the laws of that State. P. C., 799. This is because the presumption of innocence must be indulged in favor of defendant by the tribunal, which must pass upon his guilt or innocence, but in interstate extradition cases the court of the asylum State cannot pass upon such a question. The guilt or innocence of the relator cannot be considered.

63

The only question before the court is the correctness and legality of the proceeding. Do they conform to the requirements of Federal and such State laws as the asylum State may have adopted, not in conflict with the Federal laws.

2. In the case at bar there is no question as to the nature of the crime charged, and that they are offenses against the laws of Alabama. Embezzlement and theft are crimes in every State of the Union. Neither time nor place are essential elements in said crimes. We do not think an indictment failing to charge time and venue must necessarily be fatally defective in every State of the Union whatever be its statutes or forms of proceeding. In the case of Noles *vs.* The State, 24 Ala., 693, this question was passed on by the supreme court, which held that the t-en code dispensing with the necessity of allegation of time and venue, but requiring proof thereon, was not against the bill of rights; that the accusation of the commission of crime is the gravamen of the indictment that could not be dispensed with, but the particulars as to time,
64 place, and circumstance not constituting essential elements in the crime may be dispensed with by statute and be left as a matter of proof in establishing jurisdiction. See also Thompson's case, 25 Ala., 41; Quarterman's case, 3 Heisk., 65; Alexander's case, 3 Heisk.; Chamberlain's case, 6 N. W., 257; Foster's case, 19 Ohio St., 415.

In speaking of the allegation of time Mr. Bishop says it is a mere form unless some special reason renders it important, 1st Bishop Crim. Pract., 386; and in this State, where some allegation of time is necessary, any time between the finding of the indictment and the period fixed by limitation can be shown. In Alabama, under article 4373, Code 1886, it is not necessary to state the precise time at which the offense was committed. It may be alleged to have been committed on any day before the finding of the indictment unless time is a material ingredient of the offense. As to venue, Mr. Bishop says: "It was provided by 14 and 15 Victoria, c. 100, art. 23, that the venue need not be stated in the body of any indictment, but the county or city named in the margin thereof shall be taken to be the venue for all the facts stated in the body of the indictment." Bishop Crim. Procedure, 368. He also says some of our States have adopted statutes more or less like this one. It is believed that none of them dispense with the proof of the place, but in some the provision is distinct that it need not be alleged. Thus, in Alabama "it is not necessary for the indictment to allege where the offense was committed, but the proof must show it to have been within the jurisdiction of the county in which the indictment is preferred." 1st Bishop Crim. Procedure, 385.

The article of the code referred to by Mr. Bishop is 4374 of the Code of 1886. It is true Mr. Bishop questions the wisdom
65 of such legislation, 1st Bishop's Crim. Procedure, 385, but we may answer in the language of C. J. Taney, "Alabama has an undoubted right to regulate forms of pleading and process in her own courts in criminal as well as civil cases and is not bound

to conform to those of any other State." Kentucky *vs.* Denison, 24 How., 107; *Ex parte* Riggle, 114 U. S., 642.

The judgment appealed from is in all things affirmed and it is ordered that appellant pay the costs of this appeal and that he be delivered to the said P. B. Dorlan or any duly authorized agent of the State of Alabama in accordance with the requirements of the executive warrant of the governor of this State.

SIMKINS, *J.*

We desire to modify certain propositions stated in the opinion of Judge Simkins. It is intimated, if not stated directly, that the relator would have the right to show by proper evidence that the indictment in substance was not sufficient under the laws of the demanding State. Our position upon this question is that if it reasonably appears upon the trial of the *habeas corpus* that the relator is charged by indictment in the demanding State, whether the indictment be sufficient or not under the law of that State, the court trying the *habeas corpus* case will not discharge the relator because of substantial defects in the indictment under the laws of the demanding State. To require this would entail upon the court an investigation of the sufficiency of the indictment in the demanding State, when the true rule is that if it appears to the court that he is charged by an indictment with an offense, all other prereq-
66 uisites being complied with, the applicant should be extradited.

We are not discussing the character of such proof; this must be made by a certified copy of the indictment, etc.

J. M. HURT,
*Presiding Judge.*
W. L. DAVIDSON, *Judge.*

Filed June 23rd, 1893.

CLERK'S OFFICE,
COURT OF CRIMINAL APPEALS, AUSTIN, TEXAS.

I, P. Walton, clerk of the court of criminal appeals of Texas, at Austin, do hereby certify that the foregoing nine and one-half pages contain a true and correct copy of the opinion of this court delivered in cause No. 226, *Ex parte* Geo. A. Pearce, now on file in this office.

Witness my hand and seal of said court this 26th day of June, A. D. 1893.

P. WALTON,
*Clerk Court of Criminal Appeals.*

67 *Writ of Error.*

THE UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the court of criminal appeals of the State of Texas, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said court of criminal

appeals, before you or some of you, being the highest court of law or equity of the State of Texas in which a decision could be had in the said suit between the plaintiff in error, George A. Pearce, and the defendants in error, The State of Texas and P. B. Dorlan, J. V. & J. M. Cunningham, and C. C. Jackson, wherein was drawn in question the *constitution* of certain articles of the Constitution of the United States and certain articles of the statutes of the United States and the decision was against the right, title, and privilege claimed under said Constitution and statutes, a manifest error hath happened, to the great damage of the said George A. Pearce, plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that *these and these* under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concernong the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in said Supreme Court then and there, that, the records and proceedings aforesaid being inspected,
68 the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, this the 11th day of July, A. D. 1893.

Attest:

[SEAL.] D. H. HART,
*Clerk Circuit Court of the United States,*
*Western District of Texas, 5th Circuit.*

This writ is in all things allowed and granted, and the judges and officers of said court of criminal appeals will govern themselves accordingly.

This the 11th day of July, A. D. 1893.

J. M. HURT,
*Presiding Judge of the Court of Criminal*
*Appeals of the State of Texas.*

*Citation in Error.*

THE UNITED STATES OF AMERICA:

To the State of Texas and to P. B. Dorlan and to J. V. & J. M. Cunningham and C. C. Jackson, Greeting:

You and each of you are hereby cited and admonished to appear at the Supreme Court of the United States of America, to be holden in Washington, D. C., on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the court of criminal appeals of Texas, where*as* George A. Pearce is plaintiff in error and The State of Texas and you, P. B. Dorlan, and you, J. M. & J. V. Cunningham, and you, C. C. Jackson, are defendants

in error, and there show cause, if any there be, why the judg-
69 ment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in this behalf.

This the 11th day of July, 1893.

J. M. HURT,
*Presiding Judge of the Court of Criminal Appeals of Texas.*

We hereby acknowledge due service of this citation and the receipt of a true copy of the same this the 11th day of July, 1893, for 2nd Monday in October next.

J. S. HOGG,
*Governor of Texas.*
C. A. CULBERSON,
*Attorney General for the State of Tex.*
J. V. CUNNINGHAM,
*Sheriff, Taylor County, Texas.*
C. C. JACKSON,
*Deputy Sheriff, Taylor Co., Texas.*
J. M. CUNNINGHAM,
*Deputy Sheriff, Taylor Co., Texas.*
PHELAN B. DORLAN.

70 *Assignment of Errors.*

The Supreme Court of the United States.

| | |
|---|---|
| *Ex Parte* GEORGE A. PEARCE, Applicant for *Habeas Corpus*, Plaintiff in Error, *vs.* THE STATE OF TEXAS *et al.*, Defendant- in Error. | On Appeal by Writ of Error in the Hon. the Supreme Court of the United States from the Hon. the *Hon.* Court of Criminal Appeals of Texas. |

And thereafter came George A. Pearce, plaintiff in error, by his attorneys of record, and says that in the record and proceedings before said the hon. the court of criminal appeals of Texas there are many and manifest errors, and that in giving the judgment as rendered and remanding plaintiff in error and in refusing to discharge plaintiff in error the said the hon. court of criminal appeals acted against and contrary to the Constitution and statutes of the United States, and for the purpose of pointing out some of the said errors so committed the plaintiff in error, George A. Pearce, presents and files the following assignment of errors:

1st. Because under the Constitution and statutes of the United States the pretended indictment by reason of which plaintiff in error was arrested and was and is now restrained of his liberty is insufficient to authorize the extradition of a citizen of the United States to be carried from the State of his residence to another State, in this: Said pretended indictment does not charge plaintiff in error "with
71 having committed treason, felony, or other crime" in the State of Alabama and does not show that Alabama has jurisdiction of the crime or offense attempted to be charged, for

which reason the governor of Alabama was not authorized to make demand upon the governor of Texas and the governor of Texas was not authorized to grant such demand and issue his warrant thereon, and the defendants in error were not authorized to arrest and restrain plaintiff in error as they have and are now doing.

2nd. Because it does not appear from said pretended indictment that the offense attempted to be charged can now be prosecuted in Alabama, in this: Said indictment alleges no time or act done anterior to the presentment of the indictment—*i. e.*, February 16th, 1889. The offence attempted to be charged being one for which there is a period for prosecution, it should be made to appear that plaintiff in error can now be legally tried for the alleged offense in the State of Alabama.

3rd. Because the said pretended indictment is not a "charge" and is not an "indictment" within the meaning of the Constitution and statutes of the United States, in this: It charges no crime and alleges no place.

4th. Because, this being a proceeding and criminal prosecution under and by virtue of the Constitution and statutes of the United States, before plaintiff in error can be restrained and extradited herein the indictment should inform him "of the nature and cause of the accusation," and an indictment such as the one in question, which charges no time and alleges no place, "does not inform plaintiff in error of the nature and cause of the accusation" against him.

5th. Because the facts show that said indictment was not
72 returned while plaintiff in error was within the jurisdiction of the court of Alabama, for which reason plaintiff in error cannot be extradited thereunder, any law or statute of Alabama to the contrary, for such an indictment will not support process beyond the limits of Alabama.

6th. Because plaintiff in error's detention under these proceedings is not due process of law under the Constitution and laws of the United States, in that said indictment charges no time or place, and plaintiff in error's detention under these proceedings by reason of said indictment is depriving him of his liberty without due process of law and is contrary to the V, VI, and XIV amendments.

Wherefore plaintiff in error prays the hon. the Supreme Court of the United States to reverse and annul the said judgments of the courts below and to enter an order and judgment releasing and discharging plaintiff in error from the custody and restraint of defendants in error and each and all of them and for all other relief of every nature and kind to which plaintiff in error may be entitled by reason of the facts on record herein; also that such process, notices, citations, and writs be issued hereunder as the law and facts require; *as* plaintiff in error will, as in duty bound, ever pray, etc.

K. K. LEGETT &
S. P. HARDWICKE,
*Attorneys for Plaintiff in Error, George A. Pearce.*
GEORGE A. PEARCE,
*Plaintiff in Error.*

Endorsed: No. 226. 5th assignment. *Ex parte* George A. Pearce, plaintiff in error, *vs.* The State of Texas *et al.*, defendants in error. Assignments of error. Filed in court of criminal appeals at Austin July 11, '93. P. Walton, clerk.

73 *Certificate.*

CLERK'S OFFICE, COURT OF CRIMINAL APPEALS,
AUSTIN, TEXAS.

I, P. Walton, clerk of the court of criminal appeals of Texas, at Austin, do hereby certify that the foregoing seventy-two (72) pages contain a true and correct copy of all the proceedings had in cause No. 226, entitled *Ex parte* George A. Pearce, as the same appears from the papers pertaining to said cause now on file in my office.

Witness my hand and seal of said court this the 23rd day of September, A. D. 1893.

[Seal Court of Criminal Appeals of Texas.]

P. WALTON,
*Clerk Court of Criminal Appeals.*

Endorsed on cover: Case No. 15,436. Texas court of criminal appeals. Term No., 1052. George A. Pearce, plaintiff in error, *vs.* The State of Texas, P. B. Dorlan, J. V. and J. M. Cunningham, and C. C. Jackson. Filed October 27th, 1893.

Office Supreme Court, U. S.
FILED.
NOV 19 1894
JAMES H. McKENNEY,
CLERK.

# In the Supreme Court of the United States.

NO. 596 OF OCTOBER TERM, 1894.

GEORGE A. PEARCE, *Plaintiff in Error*,

*versus*

THE STATE OF TEXAS, P. B. DORLAN, J. V. AND J. M. CUNNINGHAM, AND C. C. JACKSON.

IN ERROR TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS.

INTERSTATE EXTRADITION—HABEAS CORPUS TO BE DISCHARGED BECAUSE OF ALLEGED DEFECTS IN THE INDICTMENT.

Brief of WILLIAM L. MARTIN, Attorney-General of Alabama, on Motion to Dismiss or Affirm.

# In the Supreme Court of the United States.

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GEORGE A. PEARCE, *Plaintiff in Error,*

*versus*

THE STATE OF TEXAS, P. B. DORLAN, J. V. AND J. M. CUNNINGHAM, AND C. C. JACKSON.

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*Inter-State Extradition—Habeas Corpus to be Discharged because of Alleged Defects in Indictment.*

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## Statement of the Case.

The plaintiff in error, George A. Pearce, was arrested in the State of Texas on an executive warrant issued April 22, 1893, by the Governor of the State of Texas, upon the requisition of the Governor of Alabama, to be delivered up to the State of Alabama, to answer two indictments preferred against him in the City Court of Mobile, Alabama, each charging him with the crimes of embezzlement and grand larceny: (Printed Record, pp. 4 and 5). Being thus under arrest, and in the custody of the defendant in error, P. B. Dorlan, as agent of the State of Alabama, to be transported to Mobile for trial upon said indictments, Pearce sued out a writ of habeas corpus before the Judge of the Forty-second District of the State of Texas, praying, for reasons therein stated, to be discharged from custody. On the hearing of said petition the District Judge refused the prayer thereof and remanded Pearce to the custody of said Dorlan; thereupon Pearce appealed to the Court of Criminal Appeals of the State of Texas, where, on the 23rd day of June, 1893,

the decision of the District Judge was affirmed. Pearce then sued out a writ of error to have this court review and reverse the judgment of the Texas Court.

The grounds on which it is claimed that Pearce is entitled to his discharge, as set forth in his assignments of error made in this court, may be briefly stated as follows:

1st. Because the indictment does not aver that the alleged offense was committed within the State of Alabama.

2nd. Because the indictment does not aver the time when the alleged offense was committed.

3rd. Because the indictment was not returned while Pearce was within the jurisdiction of the City Court of Mobile. (Printed Record, pp. 39-40).

## The Indictments are drawn in accordance with the Alabama Code System of Criminal Pleading.

The indictments are set out in the record (pp. 5-6.). They are drawn in accordance with the provisions of the Code of Alabama, 1886, which are as follows:

4364 (4782, 4783). *Definition; not distinguished from presentment.*—An indictment is an accusation in writing, presented by the grand jury of the county, charging a person with an indictable offense; the distinction between indictments and presentments is abolished.

4365 (4784). *Caption and conclusion.*—An indictment must contain, in the caption or body thereof, the name of the state, county, court and term, in and at which it is preferred, and must conclude "against the peace and dignity of the State of Alabama."

4366 (4824). *Forms in Code sufficient.*—The manner of stating the act constituting the offense, as set forth in the forms given in title six, part five of this Code, is sufficient in all cases in which the forms there given are applicable; in other cases, forms may be used as near similar as the nature of the case and the rules prescribed in this chapter will permit.

4367 (4815). *Formal defects not fatal.*—An indictment must not be held insufficient, nor can the trial, judgment, or other proceedings thereon, be affected by reason of any de-

fect or imperfection in any matter of form which does not prejudice the substantial rights of the defendant on the trial.

4368 (4785). *Statement of offense.*—The indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction, to pronounce the proper judgment; and in no case are the words "force and arms" or "contrary to the form of the statute" necessary.

4369 (4801). *Construction of words used.*—The words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which must be construed according to their legal meaning.

4370 (4792). *Statute words not necessary; what words sufficient.*—Words used in a statute to define an offense need not be strictly pursued in the indictment; it is sufficient to use other words conveying the same meaning.

4371 (4793). *Offense described as at common law; punishment.*—In an indictment for an offense which was indictable at common law, the offense may be charged or described as at common law, and the defendant, if convicted, must receive the punishment prescribed by the statute.

4372 (4794). *Special and general terms in statutory definitions.*—When a statute creating or defining an offense, uses special or particular terms, an indictment on it may use the general term which, in common language, embraces the special term.

4373 (4788). *Statement of time.*—It is not necessary to state the precise time at which the offense was committed; but it may be alleged to have been committed on any day before the finding of the indictment, or generally before the finding of the indictment, unless time is a material ingredient of the offense.

4374 (4787). *Statement and proof of venue.*—It is not necessary to allege where the offense was committed; but it must be proved, on the trial, to have been committed within the jurisdiction of the county in which the indictment is preferred.

4899 (4824). *Following forms sufficient.*—The following forms of indictment, in all cases in which they are applicable, are sufficient; and analogous forms may be used in other cases.

CAPTION, COMMENCEMENT AND CONCLUSION. § 4365 (4784.)

THE STATE OF ALABAMA, .....county } Circuit court,.....Term, 18..

The grand jury of said county charge that, before the finding of this indictment, etc., (describing the offense as in the following forms), against the peace and dignity of the State of Alabama.

E. F. J., Solicitor of the.....circuit.

39. EMBEZZLEMENT, ETC., BY BANK OFFICER. § 3796 (4383), § 3810 (4811).

A. B., an officer of the Central Bank of Alabama, a bank incorporated under the laws of said state, embezzled, or fraudulently converted to his own use, money to about the amount of five hundred dollars (or bank-notes to the amount of about one thousand dollars, as the case may be), which was in the possessiou of said bank, or deposited therein.

51. GRAND LARCENY. § 3789 (4358, 4359, 4360), § 3791 (4812).

A. B., feloniously took and carried away a horse, the personal property of C. D., (or a gold watch of the value of .....dollars), the personal property of C. D.; or,

A. B., feloniously took and carried away from a building on fire, or which was removed in consequence of an alarm of fire, a silverwatch, of the value of.....dollars, the personal property of C. D.; or,

A. B., feloniously took and carried away from a dwelling-house a diamond breast-pin of the value of.....dollars, the personal property of C. D.; or,

A. B., feloniously took and carried away from the person of C. D., one bank-note for one dollar on the bank of Mobile, of the value of.....dollars, the personal property of C. D.; or,

A. B., knowingly, willfully, and without the consent of the owner, entered upon the land of C. D., and cut and carried off timber (or rails, as the case may be), of the value of twenty-five dollars or more, against, etc.

## The form of Indictment here assailed is sustained by decisions of the highest Court of Alabama running back forty years.

This system of criminal pleading, since its introduction into the Code of Alabama, 1852 (Sections 3501 et seq.), has many times been the subject of consideration by the Supreme Court of Alabama, and it has uniformly been held that indictments in form as prescribed by the Code are good and sufficient.—Noles v. State, 24 Ala. 672; Thompson v. State, 25 Ala. 41; Elam v. State, Ib. 53; Mayor v. State, Ib. 32; Molett v. State, 35 Ala. 408; Aiken v. State, 35 Ala. 399; Burt v. State, 39 Ala. 628; Frank v. State, 40 Ala. 12; Wesley v. State, 52 Ala. 188; Bradford v. State, 54 Ala. 230; Sandy v. State, 60 Ala. 58; Spigener v. State, 62 Ala. 383; Smith v. State, 63 Ala. 55; McCullough v. State, Ib. 75; Haley v. State, Ib. 89; Tatum v. State, Ib. 147; Phillips v. State, 68 Ala. 469; Billingslea v. State, Ib. 486; Pace v. State, 69 Ala. 231; 106 U. S. 583; Bogan v. State, 84 Ala. 449; McGuff v. State, 88 Ala. 147; Linton v. State, Ib. 216; Huffman v. State, 89 Ala. 33; Williams v. State, 91 Ala. 14; Rosson v. State, 92 Ala. 76; Reeves v. State, 95 Ala. 31; Walker v. State, 96 Ala. 53.

In the case of Noles v. State, 24 Ala. 672, 683, decided in 1854, the court, speaking with respect to the validity of the statutory form of indictment said: "It is not pretended that the prisoner was tried out of the county in which the offense was committed. It was competent for the legislature to enact that it should not be necessary to allege where the offense was committed, but that the proof must show it to have been within the jurisdiction of the county in which the indictment was preferred.—Code Sec. 3514. The accusation of the commission of the crime, is the gravamen of the indictment. This can not be dispensed with; but *the particulars as to time, place, and circumstance, not constituting essential elements in the crime, may be dispensed with in the indictment* by the statute, and be left as matter of proof, as establishing

or not the jurisdiction of the court. We can see no inconvenience or injury, which could result to the accused, from this, as the statute now secures to him a trial in the county where the offense was committed, unless upon his motion it is taken to another county on change of venue."

In Thompson v. State, 25 Ala. 41; and Elam v. State, Ib. 53, decided in the same year, it was held that an indictment under the Code charging the commission of an offense "before the finding of the indictment," was good.

In Molett v. State, 33 Ala. 408, 411, the indictment alleged that the offense was committed "before the finding of the indictment," and after a specified day which was beyond the period of limitation. Of this the court said: "The indictment fails, therefore, to show the commission of the misdemeanor within the period prescribed by the statute of limitations. Before the Code, this would have been a fatal objection; but it is not now necessary to make any averment that the indictable act was done within the time mentioned in the statute of limitations. No specification of the time is necessary, unless time is a material ingredient of the offense."

In Wesley v. State, 52 Ala. 182, 188, the court said: "So far as the jurisdiction of the court is dependent on venue, the original statement in the indictment, 'State of Alabama. Montgomery county,' is equivalent to an averment that the offense was committed within the body of that county, and authorizing evidence that such was the fact," citing Noles v. State, *supra*. In Smith v. State, 63 Ala. 55, 58, the court, speaking of time and venue, said: "These constituent elements, by a declaration of the legislative will, an indictment framed according to Section 4814 of the Code, must be understood as charging, although, in fact, it expresses neither of them. If the testimony fails to establish either one of of these elements of the essence, the defendant is entitled to an acquittal."

In Phillips v. State, 68 Ala. 469, 472, the court said: "The indictment is in the form prescribed by the Code, and avers

all the constituent elements of murder, though omitting averments which by the common law were indispensable. Such indictments were pronounced sufficient in Noles v. State, 24 Ala. 672, and the decision has been since uniformly followed."

An indictment not framed on any form given in the Code "must aver every material constituent of the offense, *always excepting the statement of venue and time.*" Grattan v. State, 71 Ala. 344, 346. These facts are understood to be charged by the statement of the county in the margin and the allegation that the offense was committed before the finding of the indictment. The legal effect of the language employed in the indictments against Pearce is to charge him with the commission of the crimes of embezzlement and grand larceny, in the county of Mobile, State of Alabama, within three years before the finding of the indictment, such being the limitation. Code of Alabama, 1886, Sections 3789, 3795, 3707—3710.

## England and many of the States of the Union have dispensed with allegations of Time and Venue in Indictments.

It was provided by 14 and 15 Vict., C. 100 Sections 23, 24, that it shall not be necessary to state any venue in the body of the indictment, but the county, city or other jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such indictment; and no indictment shall be held insufficient for omitting to state the time at which the offense was committed, in any case where time is not of the essence of the offense committed.—1 Archibald Criminal Practice and Pleading, Sections 260, 264.

In many of the States of the Union statutory provisions similar to the British enactment have been adopted and sustained by the courts.—See Virginia Code of 1887, Section 3999; Sled v. Com., 19 Grat. 813; Rhodes v. State, 78 Va., 692; Ohio Code, 1880, Section 7215; Wolf v. State, 19 Ohio

St. 248; Tennessee Code 1884, Sections 5953, 5954; Quartermus v. State, 3 Heisk. 65; Wickersham v. State, 7 Cald. 525; Missouri Code, 1889, Sections 4107; 4115; State v. Keel, 54 Mo. 182; State v. DeLay, 30 Mo. App. 357; Mississippi Code, Thompson, etc., Section 1356; Holland v. State, 60 Miss. 939; Maryland Pub. Laws, 1888; Vol. 1, p. 553, Section 286; Michigan Code, 1882, Vol. 2, Section 9534; Kansas Code, 1889, Section 5170; Florida Code, 1892, Section 2892; California Code, Vol. 4, Section 955; Nebraska Code, 1891, Section 6039; Dillon v. State, 9 Iredell, (N. C.) 408; Nicholls v. State, 40 Ill. 395; State v. Haney, 1 Hawk. (N. C.) 430; State v. Comstock, 27 Vt. 553.

## But the Sufficiency of the Indictment is a question for the Alabama court on the trial of the Cause.

In extradition proceedings the sufficiency of the indictment as a matter of technical pleading will not be inquired into on habeas corpus.—Exparte Reggel, 114 U. S. 642; 2 Moore on Extradition, Section 550; Matter of Voorhees 3 Vroom (N. J.) 141; Davis v. Com. 122 Mass. 324; Brown v. Com. 112 Mass. 409; People v. Byrnes, 33 Hun. (N. Y.) 98; State v. O'Conner, 38 Minn. 243; Exparte Sheldon, 34 Ohio St. 319.

In *Exparte* Reggel, *supra*, it was insisted for the petitioner that the indictment which accompanied the requisition "did not sufficiently charge the commission of the crime." Of this proposition, the court said: "It is sufficient for the purposes of the present case to say that, by the laws of Pennsylvania, every indictment is to be deemed and adjudged sufficient and good in law which charges the crime substantially in the language of the act of assembly prohibiting its commission and prescribing the punishment therefor, or, if at common law, so plainly that the nature of the offense may be easily understood by the jury; and, that the indictment, which accompanied the requisition of the governor of Pennsylvania, does charge the crime substantially in the language of her statute. That Commonwealth has the right to estab-

lish the forms of pleadings and process to be observed in her own courts, in both criminal and civil cases, subject only to those provisions of the Constitution of the United States involving the protection of life, liberty and property in all the Sates of the Union." (P. 651).

Nor will this Court entertain objections to the Indictment in advance of the trial thereon in the State Court.

In Cook v. Hart, 146 U. S., 183, 195, the court said: "While the power to issue writs of habeas corpus to State Courts which are proceeding in disregard of rights secured by the Constitution and laws of the United States may exist, the practice of exercising such power before the question has been raised or determined in the State court is one which ought not to be encouraged. The party charged waives no defect of jurisdiction by submitting to a trial of his case upon the merits, and *we think that comity demands that the State courts, under whose process he is held*, and which are equally with the Federal courts charged with the duty of protecting the accused in the enjoyment of his constitutional rights, *should be appealed to in the first instance.* Should such rights be denied, his remedy in the Federal Court remain unimpaired." To the same effect are the cases of In re Duncan, 139 U. S., 446; In re Wood, 140 U. S. 278; Ex parte Royall, 117 U. S., 241; Ex parte Fonda, 117 U. S., 516.

In this case there is no special circumstance to furnish a reason why this court should, in advance of the trial in the State court, entertain Pearce's petition. It is not insisted in his behalf that the statutes of Alabama which he is charged with violating are without validity, nor is it shown that he was not in Alabama at the time the offenses are alleged to have been committed. There is nothing in the record which in the least tends to overturn the finding of the executive that Pearce was a fugitive from justice in Alabama. See Roberts v. Reilly, 116 U. S., 80.

The attempt here made to have this court pass upon the

sufficiency of a State indictment as a matter of pleading, in advance of the trial thereon in the State court, is not to be tolerated. Such practice, once sanctioned, would greatly obstruct the administration of the criminal laws in the States, to say nothing of the labors and burdens which it would cast upon the Federal courts. If every fugitive from justice arrested in a proceeding of interstate extradition may put the demanding State to the trouble, expense and delay of litigating with him, through State and Federal Courts, questions of criminal pleadings, then the constitutional right of each State to have its fugitives from justice delivered up for trial in its own courts, is seriously impaired. If the fugitive in custody for transportation to the demanding State may thus test the sufficiency of the form of the indictment which he is wanted to answer, then the remedy would seem to be equally open to all persons under indictment and arrest for crimes against the laws of the States.

In view of the wise and reasonable rule heretofore laid down by this court touching the issue of writs of habeas corpus to State courts, and of the evil consequences to result from the practice here attempted to be inaugurated, it is not believed that the plaintiff in error will be longer permitted to use the process of this court to delay the lawful claim of the State of Alabama upon him.

In the absence of any special circumstance calling for the exercise of jurisdiction in the premises, Pearce has no standing in this court.

Respectfully submitted,

WILLIAM L. MARTIN,

*Attorney-General of Alabama.*